

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Hon. Deborah Brooks Durden, Administrative Law Judge

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SC Court of Appeals Case No. 2018-001788

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Toyota of Greer..... Appellant,

v.

South Carolina Department of Motor Vehicles..... Respondent.

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**RECORD ON APPEAL – VOL. I**

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**STATE OF SOUTH CAROLINA  
OFFICE OF MOTOR VEHICLE HEARINGS**

South Carolina Department of Motor Vehicles )  
Petitioner, )  
vs. ) **FINAL ORDER AND DECISION**  
Toyota of Greer, )  
Respondent. )

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**Appearances:**

For the Petitioner: (Witnesses) Zenda Leaks, Assistant Manager -Dealer Licensing & Audit Unit Agent - SCDMV  
Philip S. Porter, Esquire – Deputy General Counsel - SCDMV  
Jason Benjamin- Dealer Agent –SCDMV  
Lisa Bird- Team Leader – SCDMV  
Scott Bocook – Quality Auto Sales

For Respondent: Bradford Martin - Respondent’s Attorney  
Robert Hogan – Sales Manager & Vice President  
- Greer Toyota  
Toni Powell – Wholesale Title Clerk – Greer Toyota

**Other Information:**

Dealer License # 30643  
Type of Hearing: Denial of Dealer License Suspension  
(S.C. Code Ann. §§ 56-3-30, -40, -350, -19-210, -360 and -370, and Procedure DE-002)

**INTRODUCTION**

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) pursuant to a request for a contested case hearing filed by Toyota of Greer, the Respondent. Toyota

of Greer is a licensed motor vehicle dealer in the State of South Carolina. The SCDMV sent Respondent an Official Order of License Suspension dated June 27, 2017. It stated the grounds for the revocation were violations of *S.C. Code Ann.* §§ 56-3-30, -40, -350, -19-210, -360 and -370, and Procedure DE-002 due to an accumulation of twelve sanction points each alleging “engaging in any action which causes damage to any party or the public (Failure to deliver title within 45 days of the date of sale).

The Respondent filed a timely request for a hearing, and pursuant to written notice to the parties, a hearing was held before me on October 02, 2017 at the Greer Municipal Court, Greer, South Carolina. After reviewing the entire record and considering all the evidence, I conclude that the Respondent’s Dealer License Suspension is sustained.

**FINDINGS OF FACT**

Having observed the witnesses and reviewed the exhibits presented at the hearing and closely passed upon their credibility, and having taken into consideration the burden of persuasion by the parties, I make the following Findings of Fact by a preponderance of the evidence.

1. Complaint 16/746 involves the Complaint of Scott Bocook, manager of Quality Auto of Anderson. His complaint was filed on or about July 11, 2016, and received by the Department on July 14, 2016. He alleged that he purchased a vehicle, a 2000 Chrysler 300 VIN 2C3HE66G4YA198153 for his dealership on February 26, 2016, but had not received the title as of the date of the complaint, a time a period of 135 days. While the Respondent produced evidence that the vehicle was sold through an auction, a Bill of Sale was prepared and signed by a representative of the Respondent and Mr. Bocook containing the following declaration:

I, Toyota of Greer (Seller), 13770 E. Wade Hampton BL Greer SC 29651 state that on the 26 day of February, Yr. 2016 The following vehicle Make Chrysler Model 300M Body Type 4 Dr Year 2000 Vehicle Identification 2C3HE66G4YH198153 License Plate No. 37456 was sold to Quality Auto of Anderson L Buyer 911 Whitehall Rd Anderson SC 29625 And the above vehicle is free of all liens and encumbrances in the buyer’s name except:

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(List here any mortgages, liens or encumbrances)

The line for the listing of liens or encumbrances was left blank. There was a lien on the vehicle to a title loan establishment from the customer who had sold the vehicle to Respondent. Thus, the above statement concerning the absence of a lien was false. Respondent produced testimony of Wholesale Title Clerk Toni Powell and a copy of a check prepared for the title lender the day before the sale. Ms. Powell asserted in testimony that the signature on the bill of sale on behalf of seller was not authorized. In any case it was not withdrawn or corrected and was allowed to become part of the Department's official records of the sale through the agency of the auction or otherwise. Ms. Powell stated that she was aware that secondary lenders, such as title lenders, often took up to twenty-one days to give a lien satisfaction. Nevertheless, she testified that the known location of the particular title lender had closed, that she was referred to another location and had difficulty reaching it, and was ultimately referred to the Spartanburg location.

Upon Agent Benjamin's investigation of the complaint, he recorded remarks from Ms. Powell that Toyota of Greer and associated dealerships owned by MCE had had a lot of turnover and movement within their finance departments due to employee terminations, which were the result of bad deals. Respondent's argument at hearing differed somewhat from Ms. Powell's statement, asserting that the dealership had done everything possible to deliver title, that the vehicle itself that Respondent had sold was a piece of junk and had nominal value, and that if there was any fault at all it was Mr. Bocook's by failing return the vehicle through the rules of the auction rather than insisting on receiving the title. Ms. Powell also submitted a written statement in which she added that once she located a title lender branch that could supply a lien release, she still had to wait for the manager to return from vacation. She also stated that once the branch was located and the manager was available, the title was delivered to the auction. She also testified the check to the title lender cleared on March 8, 2016, ten days after the sale. Agent Benjamin confirmed that title was provided on July 18, 2016, 143 days after purchase. This was after receipt of the complaint from the Department.

2. Complaint No. 17/445 involves Tonya McAllister. On or about April 26, 2017 she filed a complaint with the Department stating she had purchased a 2006 Mazda VIN JM1FE173560201810 from Toyota of Greer on February 10, 2017 and had not yet received title. It turned out that the vehicle had a lien of record by prior owner, Matthew Gorman. Department

records showed that Respondent had Mr. Gorman sign a power of attorney to authorize Respondent's representative to take steps to sell that vehicle on January 3, 2017.

In connection with the sale, an Affidavit & Notification of Sale of Motor Vehicle was executed. As the name implies, it is in the form of a sworn affidavit. In pertinent part it contained this statement:

Personally appeared before me, MCE Automotive, Inc, d/b/a Toyota of Greer 13770 E. Wade Hampton BL Greer SC 29651 who being duly sworn, deposes and says that on the 10th day of February 2017 he sold the following motor vehicle: Make MASDA Model R&B Year 2006 Identification (Serial) No. JM1FE173560201810 License No. \_\_\_\_\_ was sold to TONYA GREEN MCCALLISTER 112 TIMBERBROOK RD GAFFNEY CHEROKEE SC 29340-5948 Deponent further states that there are no liens or encumbrances on the said vehicle except as listed below:

Lienholder WELLS FARGO DEALER SERVICES Amount 6020.00

Address PO BOX 997517 SACRAMENTO CA 95899-7517 Date 02/10/2017

Wells Fargo Dealer Services is the lender that financed the sale of the vehicle to Ms. McAllister. There was no mention of any other lienholder. The document was signed by Ms. McAllister and by a representative of the Respondent, a different representative than either the one that signed the affidavit for Ms. Gilliam's transaction (FOF #3) or the person that signed the bill of sale in Mr. Bocook's transaction.

In investigating the complaint, Mr. Benjamin asked for a statement from Ms. Michelle Taylor, Title Clerk, and she gave him a written one in which she stated that the customer who traded the vehicle in was not the actual owner, and she did not know the status of the title until she enlisted the aid of a dealership in North Carolina. She was not able to get in touch with the actual owner until mid-April. She was unable to say whether the sales personnel had requested a driver's license from the customer initially because she was not in sales. Thus, when the sale was made and the affidavit signed, the Respondent had no idea whether or not there was a lien.

3. Complaint No. 16/664 involved Sheila Gilliam. On or about June 28, 2016 she filed a complaint with the Department stating that she had purchased a 2007 Ford Explorer VIN1FMEU65E07UB13396 from Toyota of Greer on March 29, 2016 and had not yet received title. It turned out that the vehicle had a lien of record to Ford Motor Credit by prior owner, James

and Catherine Derrick. Department records showed that Respondent had James Derrick and Catherine Derrick sign powers of attorney to authorize Respondent's representative to take steps to sell that vehicle on January 21, 2016. Respondent submitted a contract whereby the Derricks contracted to trade in the Explorer to Respondent on January 26, 2016. Respondent also submitted a title inquiry report that it pulled on February 4, 2016 revealing the lien to Ford Motor Credit. Respondent nevertheless sold Ms. Gilliam the Explorer on March 29, 2016.

In connection with the sale, an Affidavit & Notification of Sale of Motor Vehicle was executed. As the name implies, it is in the form of a sworn affidavit. In pertinent part it contained this statement:

Personally appeared before me, MCE Automotive, Inc, d/b/a Toyota of Greer 13770 E. Wade Hampton BL Greer SC 29651 who being duly sworn, deposes and says that on the 29th day of March 2016 he sold the following motor vehicle: Make FORD Model Explorer Year 2007 Identification (Serial) No. 1FMEU65E07UB13396 License No. \_\_\_\_\_ was sold to Sheila Gilliam 337 Belcher Road Boiling Springs Spartanburg SC 29316 Deponent further states that there are no liens or encumbrances on the said vehicle except as listed below:

Lienholder \_\_\_\_\_ Amount N/A  
Address \_\_\_\_\_ Date 3/29/2016

As indicated above neither the identity of any lienholder or an address was written into the blanks. The document was signed by Ms. Gilliam and by a representative of the Respondent who was a different representative than the person who signed the bill of sale to Mr. Bocoock of Quality Auto. The dealership had knowledge of the lien of Ford Motor Credit not later than February 4, 2016. It had fifty-four days to clear the lien before it sold the Explorer to Ms. Gilliam, but it did not. Respondent did sell the vehicle to Ms. Gilliam and the title was not provided within forty-five days. Ms. Gilliam filed her complaint. Agent Jason Benjamin, in investigating the complaint, established its basic accuracy. He requested a statement regarding the circumstances of the failure to provide title and received a statement from Ms. Michelle Taylor, the Title Clerk. She stated that the vehicle was traded into the dealership on January 25, 2016, *without a title*, and there was an issue getting the title from Ford Motor Credit. Ford Motor Credit faxed a lien release on July 5, and Ms. Gilliam's title was delivered to the Department on July 6, 2016, ninety-nine days after the

purchase and at least one hundred fifty three days after Respondent was aware of the existence of the lien. She testified that she contacted Ford Motor Credit a number of times, and the company confirmed the debt had been paid four years ago. She said the company nevertheless had to contact research for old files. When the vehicle was finally titled, however, it was by letter and not by a release of lien on a title. She testified that the dealership previously subscribed to Carfax, but no longer did, and did not subscribe to R.L. Polk, Experian or other service for title data from outside South Carolina.

4. Section III.C.3. of DMV Procedure DE-002 requires that a Sanctions Report be completed if the administrative investigation reveals violations. Petitioner presented two Sanction Reports which list the violation as "Failure to deliver title within 45 days of date of sale." (Petitioner Exs. 6 and 8) Four points are assessed as the sanction on both reports. Petitioner did not present evidence of a Sanction Report related to Tonya McAllister's complaint.

I find that the assessments of 4 point violations were made pursuant to a finding by Petitioner of a "willful failure to deliver title to buyer or department within 45 days of date of sale." Having made these findings, Petitioner is required to show that the failures to deliver title were "willful" as defined in its Procedure DE-002.

Ms. Leaks, the Assistant Manager in the Dealer Licensing & Audit Unit, agreed that DMV policy states:

"The failure to deliver title violation" is not considered "willful" if the dealer can provide a written statement, substantiated by a Dealer Licensing and Audit Unit agent, identifying a prior seller or lien holder who has failed to deliver the title as required by law. (Petitioner Ex. 5, p. 6)

Ms. Leaks testified that she authored the June 27, 2017 Official Notice that included three separate violations. She stated that she had not included the word "willful" in the sanction letter but rather listed the violation as "Engaging in any action which causes damages to any party or to the public." Ms. Leaks admitted that the Notice then stated "(Failure to deliver title within 45 days of date of sale)" and that four points had been assessed against Toyota of Greer for each of the violations listed. Ms. Leaks admitted that the failure to provide title within 45 days had to be "willful" in order for a four point sanction to be assessed against the dealer.

5. Two license renewals of MCE Automotive d/b/a Toyota of Greer were put into evidence. Both were signed by a Russell Antici as owner or corporate officer. Both indicated that Robert Hogan was the sales manager. His testimony indicated he was also a partner. The 2017 renewal lists Mr. Hogan also as Vice President. On the renewal with effective dates of June 15, 2015 to June 15, 2016, the dealership checks "yes" for question 6, which asks if the applicant has a Dealer Manual.

6. The 2007 Dealer Manual was placed in evidence. Page 2-2 of the Manual clearly states the requirement that a dealer must deliver the title or registration to the customer within a 45 day period after the sale. It gives the dealer the option of giving all necessary documentation required to title the vehicle to the customer and maintaining a customer signed receipt by which the customer acknowledges the responsibility for titling and registering. There is no evidence in the record that this option was taken for any of the complaints discussed above.

7. Department Upstate Team Lead Lisa Bird testified that in her experience unless a dealer was arranging the financing of a sale of a known payoff for a trade in or the like, it was not the practice of the franchised dealer industry to make sales without a title. She testified that the Department typically does not sanction dealers if they fail to deliver title by only a few days more than forty-five days.

8. Mr. Robert Hogan, Sales Manager and Vice President of Toyota of Greer, however, testified and he forthrightly stated the dealership's position. When asked why the dealership did not avoid selling vehicles before it had secured titles for the buyers, he said while the dealership did not want trouble with the buyers and did not want trouble with the Department because it was bad for business, the dealership had to buy and sell vehicles before the titles were secured, because if the dealership did not do that the same sales would be made by the competition. Mr. Hogan also testified that the dealership(s) had made 25,182 sales in the last three years.

#### **CONCLUSIONS OF LAW**

1. Pursuant to S.C. Code Ann. §1-23-660(A) (Supp. 2016), the Hearing Officers of the OMVH, effective January 1, 2006, preside over contested case hearings involving certain suspensions, cancellations, or revocations of licenses issued by the Department. All hearings

presided over by the Hearing Officers of the OMVH are contested case hearings and must be conducted in accordance with the Administrative Procedures Act (“APA”) and the rules of procedure for the OMVH. § 1-23-660(B) (Supp. 2015). Furthermore, all appeals from final decisions of the Hearing Officers are to the South Carolina Administrative Law Court in accordance with its rules of procedure. § 1-23-660(D) (Supp. 2015).

2. Basic administrative law principles establish that an agency bears the burden of proof in an enforcement action. See Peabody Coal Co. v. Ralston, 578 N.E.2d 751 (Ind. Ct. App. 1991); Randy R. Lowell and Stephen P. Bates, South Carolina Administrative Practice and Procedure, 200-201 (2004). Since Petitioner asserts the affirmative of an issue, i.e. the enforcement of a wholesaler’s license suspension or revocation, and since it will be subject to an adverse ruling if no evidence is introduced, Petitioner bears the burden of proof in this matter. See Alex Sanders & John S. Nichols, Trial Handbook for South Carolina Lawyers § 9.3 at 366 (2nd ed. 2001).

3. The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass’n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992); see also Doe v. Doe, 324 S.C. 492, 502, 478 S.E.2d 854, 859 (Ct. App. 1996) (holding that a trial judge, when acting as a finder of fact, “has the authority to determine the weight and credibility of the evidence before him”).

4. S.C. Code Ann. § 56-15-10, related to the regulation of dealers and wholesalers, provides:

As used in this chapter the following words shall, unless the text otherwise requires, have the following meanings:

(a) “Motor vehicle”, any motor driven vehicle required to be registered under Section 56-3-110. This definition does not include motorcycles.

...

(h) “Dealer” or “motor vehicle dealer”, any person who sells or attempts to effect the sale of any motor vehicle. These terms do not include:

(1) distributors or wholesalers.

(2) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court.

(3) public officers while performing their official duties.

(4) persons disposing of motor vehicles acquired for their own use and so used in

good faith and not for the purpose of avoiding the provisions of law. Any person who effects or attempts to effect the sale of more than five motor vehicles in any one calendar year is considered a dealer or wholesaler, as appropriate, for purposes of this chapter.

(5) finance companies or other financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles they own as an incident to payments made under policies of insurance.

...

(l) "Sale," shall include the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and any option, subscription or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise.

(m) "Fraud," shall include, in addition to its normal legal connotation, the following: a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; and an intentional failure to disclose a material fact.

...

5. Pursuant to S.C. Code Ann. § 56-15-310(A) (2006), a person who engages in business as a dealer or wholesaler in the State of South Carolina must first make an application to the Department for a license. The license applies to only one place of business of the applicant and is not transferable to another person or place of business with certain exceptions for the exhibition and sale of motor homes by licensed dealers.

6. With regard to records that dealers and wholesalers are required to keep, § 56-15-340(A)(2006) provides:

Every dealer or wholesaler shall keep complete records of each transaction under which a motor vehicle is transferred for a period of not less than four years from the date of the transaction. The records must show the true name and correct address of the person or persons from whom the motor vehicle was acquired and the date of the transaction; a correct description of the vehicle, when transferred; the true name and correct address of the person to whom the motor vehicle was transferred; and the date of the transaction. The description of the motor vehicle must include the vehicle identification number, make, model, type of body, and the odometer readings at the time the motor vehicle was transferred to and from the

dealer or wholesaler. These records must be open at all reasonable times for inspection and copying by the Department of Motor Vehicles or any of its duly authorized agents.

7. With the exception of dealers selling or offering for sale a new vehicle for which there is a manufacturer's certificate of origin issued to the dealer, it is unlawful for a person to sell or offer for sale or mortgage a vehicle required to be registered and licensed in South Carolina unless a valid certificate of title has been issued for it. §56-19-210.

8. Section 56-19-360, addressing the duties of transferor and transferee with regard to title upon the sale of a motor vehicles provides:

If an owner, manufacturer or dealer transfers his interest in a vehicle other than by the creation of a security interest, he shall, at the time of the delivery of the vehicle, execute an assignment and warranty of title to transferee in the space provided therefore on the certificate or as the Department of Motor Vehicles prescribes and cause the certificate and assignment to be mailed or delivered to the transferee or to the Department.

Except as provided in Section 56-19-370, the transferee shall, promptly after delivery to him of the vehicle, execute the application for a new certificate of title in the space provided therefore on the certificate or as the Department prescribes and cause the certificate and application to be mailed or delivered to the Department.

Except as provided in Section 56-19-370, and as between the parties, a transfer by an owner is not effective until the provisions of this section have been complied with.

9. Section 56-19-370 provides:

If a dealer buys a vehicle and holds it for resale and procures the certificate of title from the owner within forty-five days after delivery to him of the vehicle, he need not send the certificate to the Department of Motor Vehicles, but, upon transferring the vehicle to another person other than by the creation of a security interest, promptly shall execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee and of any lienholder holding a security interest created or reserved at the time of the resale and the date of his security agreement, in the spaces provided on the certificate or as the department prescribes, and mail or deliver the certificate to the department with the transferee's application for a new

certificate.

10. Pursuant to §56-3-210 (C):

A dealer of new or used vehicles may issue to the purchaser of a vehicle at the time of its sale a temporary license plate....a dealer may not use a temporary license plate for any other purpose, which includes but is not limited to vehicle demonstration, employee use, or transporting vehicles from one location to another.

11. Pursuant to §56-15-40(1):

It shall be deemed a violation of paragraph (a) of Section 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.

12. Section 56-15-30(a) further provides that “[u]nfair methods of competition and unfair or deceptive acts or practices as defined in §56-15-40 are hereby declared to be unlawful.”

13. Section 56-15-350 (Supp. 2015) provides that any license issued under Chapter 15 of Title 56 may be denied, suspended, or revoked, if the applicant or licensee or an agency of the applicant or licensee acting for the applicant or licensee is determined to have:

- (a) made a material misstatement in the application for the license;
- (b) violated any provision of this chapter;
- (c) been found by a court of competent jurisdiction to have committed any fraud connected with the sale or transfer of a motor vehicle;
- (d) employed fraudulent devices, methods, or practices in connection with meeting the requirements placed on dealers and wholesalers by the laws of this State;
- (e) been convicted of any violation of law involving the acquisition or transfer of a title to a motor vehicle or of any violation of law involving tampering with, altering, or removing motor vehicle identification numbers or markings;
- (f) been found by a court of competent jurisdiction to have violated any federal or state law regarding the disconnecting, resetting, altering, or other unlawful tampering with a motor vehicle odometer, including the provisions of 49 U.S.C. §§32701-32711 (Title 49, Subtitle VI, Part C, Chapter 327);

- (g) refused or failed to comply with the Department's reasonable requests to inspect or copy the records, books, and files of the dealer or wholesaler or failed to maintain records of each motor vehicle transaction as required by this chapter or by state and federal law pertaining to odometer records; or
- (h) given, loaned, or sold a dealer license plate to any person or otherwise to have allowed the use of any dealer license plate in any way not authorized by § 56-3-2320. Any dealer license plate issued to a dealer or wholesaler pursuant to § 56-3-2320 which is determined by the department to be improperly displayed on any vehicle or in the possession of any unauthorized person is prima facie evidence of a violation of Section 56-15-350 by the dealer or wholesaler to whom the license plate was originally issued.

The Department must notify the licensee or applicant in writing at the mailing address provided in the application of its intention to deny, suspend, or revoke his license at least twenty days in advance. A licensee or applicant desiring a hearing must file a request in writing with the OMVH within ten days of receiving notice of the proposed denial, suspension, or revocation of his dealer's or wholesaler's license.

14. I conclude that the evidence showed that the Respondent committed the violation of failing to deliver title within the statutory period. In each complaint reviewed in this case, the failure to deliver was accompanied by a false and misleading bill of sale or affidavit and notification of sale, stating that there were no liens not listed on those statements. In at least two of the complaints, it is clear that someone within the dealership knew of the existence of lien on the vehicles when they were sold to a subsequent buyer, but the dealership sold them anyway and stated (or someone on the dealership's behalf stated) to the buyers that the liens did not exist. On the other complaint, it appears that the dealership was unsure of the status of any lien on the vehicle, and in fact unsure of the identity and whereabouts of the true owner, when the vehicle was sold. In each case, the titles were delayed well beyond the statutory time limit for titling or registering the vehicles.

Respondent insisted that even though the Department's Official Notice did not mention willful violation in it according to DE-002, the Department must be held to a willfulness standard and the Department could not prove willfulness. This is partly because of Respondent claim that

due to the volume of business it handled, occasional problems were inevitable and could happen to anyone. In addition, the Respondent also claimed a proper understanding of DE-002 was that there could be no violation so long as the dealer produced a statement that another prior seller or lienholder had not produced the title as required by law. That is not exactly what happened in these transactions. In the Bocook Complaint, Respondent asserted that it knew of the title loan lien before it put the vehicle on the market, it either had to know or not know where to contact the lender and receive the title. The testimony indicated it did not, but it sold the vehicle anyway. Ms. Powell addressed efforts to find the lender but was not able to do what needed to be done within the forty-five days. In Ms. Gilliam's complaint, the Respondent's evidence indicated that it was aware of the lien for fifty-four days before selling the vehicle to Ms. Gilliam. An "issue" with Ford Motor Credit extended her wait another ninety-nine days after her purchase. In Ms. McAllister's complaint, the vehicle was sold to her before the dealership even knew the identity of the prior owner.

Official Notice of License Suspension listed each complaint as "[e]ngaging in any action which causes damage to any party or to the public" with a parenthetical "(failure to deliver within 45 days of date of purchase)." Each of the warning letters used the same terminology. DE-002 contains no provision that asserts the Department is limited to any particular category. An action which causes damage to any party or to the public is a separate violation on the grid. It provides for sanction points up to 6 for each repetition. The actions of the Respondent in this matter meet the definition of "arbitrary" or "unreasonable, capricious or non-rational; depending on the will alone." Respondent chose, for reasons of competition or convenience, to sell vehicles for which it had not secured a title. It followed this by signing documents with misleadingly false assurances that the vehicles had no liens other than a lien financing the purchase. It violated the law by failing to provide title until well after the statutory deadline, and after the customers had complained to the Department. The customers were damaged by Respondent's acts by being unable to drive legally or sell the vehicles.

Therefore, I conclude that the denial of Dealer License Suspension for Toyota of Greer is sustained.

**ORDER**

Based upon the above findings of facts and conclusions of law,

**IT IS HEREBY ORDERED** that the Dealer License Suspension is sustained.

**AND IT IS SO ORDERED.**



---

Phillip T. Addington  
OMVH Senior Hearing Officer

December 12, 2017  
Greer, South Carolina

**CERTIFICATE OF SERVICE**

I, Frances L. Inabinet, hereby certify that I have this date served this Order upon all parties to this caused by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

*Frances L. Inabinet*

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Frances L. Inabinet

December 12, 2017

Columbia, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Toyota of Greer,

Docket No. 18-ALJ-21-0011-AP

Appellant,

vs.

**ORDER**

South Carolina Department of Motor Vehicles,

Respondent.

**STATEMENT OF THE CASE**

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed on January 11, 2018, by Toyota of Greer (Appellant). Appellant seeks review of a Final Order and Decision issued on December 12, 2017, by the South Carolina Department of Motor Vehicles' Office of Motor Vehicle Hearings<sup>1</sup> (Department), sustaining the Appellant's dealer license suspension. This Court has jurisdiction to hear this matter pursuant to Section 1-23-660(D) of the South Carolina Code. S.C. Code Ann. § 1-23-660(D) (Supp. 2017). For the reasons below, the Department's Final Order and Decision is affirmed.

**BACKGROUND**

Within ten months' time, three complaints relating to Appellant's failure to timely deliver title were submitted to the Department. On July 11, 2016, Scott Bocook (Complainant No. 1) filed a complaint with the Department alleging that he purchased a vehicle at auction from Appellant on February 26, 2016, but had not received the title as of the date of the complaint (one-hundred and thirty-five days after the purchase). Complainant No. 1 was provided a Bill of Sale which contained false information. It indicated that the automobile was free of all liens and encumbrances, when it was not. One of Appellant's title clerks testified that she had a check prepared for the title lender the day before the sale, and that the signature on the Bill of Sale on behalf of Appellant was not authorized. Regardless, it was not corrected and allowed to become part of the Department's official records of the sale through the agency of the auction or otherwise. While Appellant ultimately issued the check to the title lender and delivered the title to the auction, it was not until one-hundred and forty-three days had passed since the vehicle's purchase and after

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<sup>1</sup> The Office of Motor Vehicles is referenced herein as "OMVH," and is a division of the Department of Motor Vehicles.

**FILED**

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the complaint was filed. Rather than admit error, Appellant said that the vehicle was a “piece of junk” and had nominal value and that, if there was any fault, it fell on Complainant No. 1 who should have returned the vehicle through the rules of the auction rather than insisting on receipt of the title.

On April 26, 2017, Tonya McAllister (Complainant No. 2) filed a complaint with the Department stating that she purchased a vehicle from Appellant on February 10, 2017, and had not yet received the title. Records indicate that on January 3, 2017, an individual who traded in the vehicle signed a power of attorney authorizing Appellant to sell it. The individual represented that there was no lien on the vehicle and that he would provide a duplicate title which he did not do. In connection with the sale of the vehicle to Complainant No. 2, an Affidavit and Notification of Sale of Motor Vehicle was executed which contained a statement that the only lien holder was Wells Fargo Dealer Services, the lender that financed the vehicle to Complainant No. 2. No other lienholder was noted, although a lien of record existed. While it had been paid, the lien had not been released. During the Department’s investigation, Appellant’s title clerk advised that the Department’s Computerized Vehicle Registration (CVR) records indicated that someone else owned the vehicle other than the person who had traded it. The title clerk testified that she repeatedly tried to contact the person who traded in the vehicle without success until mid-April when she secured the assistance of a salesman. Appellant was ultimately able to get a release from the former lien holder and secure a duplicate title in North Carolina, but did not know the true status of the title until it enlisted the aid of a North Carolina dealership. Thus, when Appellant sold the vehicle to Ms. McAllister and the Affidavit & Notification of Sale of Motor Vehicle was signed, Appellant had no idea whether there was a lien on the vehicle.

On June 28, 2016, Sheila Gilliam (Complainant No. 3) filed a complaint with the Department stating that she purchased a vehicle from Appellant on March 29, 2016, and had not yet received the title. Unbeknownst to Complainant No. 3, there was a lien of record held by the finance company that financed the vehicle to its prior owners. Records indicate that on January 21, 2016, Appellant contracted with two individuals to trade in their vehicle. Appellant had those individuals execute a power of attorney authorizing Appellant to sell the vehicle. Appellant made a title inquiry on February 4, 2016, and was aware that a finance company had a lien on the vehicle. Appellant had forty-five days to clear the title before selling the vehicle to Complainant No. 3 but it did not. It sold the vehicle to Complainant No. 3 with knowledge of the lien. An Affidavit and

Notification of Sale of Motor Vehicle was executed in connection with the sale of the vehicle to Complainant No. 3 and the lienholder information was left blank despite Appellant's knowledge. Appellant ultimately cleared the title and delivered it to the Department on July 6, 2016, ninety-nine days after Complainant No. 3's purchase of the vehicle, and one-hundred fifty-three days after Appellant was aware of the existence of the lien.

On June 27, 2017, the Department issued an Official Notice of Dealer License Suspension (Notice of Suspension) to Appellant detailing three violations of "Engaging in any action which causes damage to any party or to the public. (Failure to deliver title within 45 days of date of sale)." Four points had been assessed against Appellant for each of three violations. The Department provides for a seven-day suspension upon a dealer's first accumulation of twelve points. See, SCDMV Procedure DE-002-Dealer Sanctions, Section III, G.4.

An evidentiary hearing was held on October 2, 2017. Both parties appeared with counsel and participated in the hearing. After considering the evidence and testimony presented, the hearing officer concluded that Appellant was aware of the requirement that a title or registration had to be delivered to the customer within forty-five days after the sale, yet it failed to do so. He further found that each of the complainants were damaged by Appellant's acts by being unable to legally drive or sell the vehicles. The hearing officer sustained the Department's suspension of Appellant's dealer license. This appeal followed.

### **ISSUE**

Whether the decision of the Department is supported by substantial evidence, and/or whether the decision is affected by error of law.

### **STANDARD OF REVIEW**

The OMVH is authorized by law to determine contested cases arising from the Department. S.C. Code Ann. § 1-23-600 (Supp. 2017). The ALC has jurisdiction to hear appeals of OMVH decisions pursuant to S.C. Code Ann. § 1-23-660(D) (Supp. 2017). As the OMVH is an "agency" under the South Carolina Administrative Procedures Act (APA), the APA's standard of review governs appeals from the decisions and orders of the APA. S.C. Code Ann. §§ 1-23-310(2) and 1-23-380 (Supp. 2017); See also Byerly Hosp. v. South Carolina State Health & Human Services Finance Com'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). Section 1-23-380(5) of the South Carolina Code provides the standard of review to be utilized by appellate bodies, including the ALC, when reviewing agency decisions:

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

This section requires the ALC to apply the “substantial evidence” rule. See e.g., Waters v. S.C. Land Res. Conservation Comm’n, 321 S.C. 219, 467 S.E.2d 913 (1996); Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm’n, 282 S.C. 430, 319 S.E.2d 695 (1984). A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best W. Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). The possibility of drawing two inconsistent conclusions from the evidence does not mean that the agency’s conclusion was unsupported by substantial evidence. *Id.* See also, Waters, 321 S.C. at 227, 467 S.E.2d at 917. The well-settled case law in this State has also interpreted the rule to mean that a decision will not be set aside simply because reasonable minds may differ on the judgment. Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct and will be set aside only if unsupported by substantial evidence. Rodney v. Michelin Tire Co., 320 S.C. 515, 518, 466 S.E.2d 357, 358 (1996) (citing Kearse v. State Health and Human Serv. Fin. Comm’n, 318 S.C. 198, 456 S.E.2d 892 (1995)). Thus, the party challenging an agency action has the burden of proving convincingly that the agency’s decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917 (citing Hamm v. AT&T, 302 S.C. 210, 394 S.E.2d 842 (1994)).

Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant, 319 S.C. at 353, 461 S.E.2d at 391 (citing Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984)). However, “[d]etermining the proper interpretation of a statute is a question of law, and [an

appellate court] reviews questions of law de novo.” Palmetto Co. v. McMahon, 395 S.C. 1, 3, 716 S.E.2d 329, 330 (Ct. App. 2011) (citation omitted).

## DISCUSSION

### Applicable Law

Several South Carolina Code provisions in Chapters 15 and 19 of Title 56 which pertain to the regulation of dealers, and the protection of titles and interests in motor vehicles are applicable in this case. Section 56-19-210 provides that except for dealers selling or offering a new vehicle for sale for which there is a manufacturer’s certificate of origin issued to the dealer, it is unlawful for any person to sell or offer for sale or mortgage in this State, a vehicle that is required to be registered and licensed in South Carolina unless a valid certificate of title has been issued. S.C. Code Ann. § 56-19-210 (2018). Section 56-19-240, which outlines the form and content for applications for certificates of title, states in part that “If the application refers to a vehicle purchased from a dealer, it **shall** contain the name and address of any lienholder holding a security interest created or reserved at the time of the sale and the date of his security agreement and be signed by the dealer as well as the owner, and the dealer promptly shall mail or deliver the application to the department...” S.C. Code Ann. § 56-19-240(C) (2018) (emphasis added).

Section 56-19-360 addresses the responsibilities of a transferor and transferee as to title upon the sale of a motor vehicle and provides:

If an owner, manufacturer or dealer transfers his interest in a vehicle other than by the creation of a security interest, he shall, at the time of the delivery of the vehicle, execute an assignment and warranty of title to transferee in the space provided therefor on the certificate or as the Department of Motor Vehicles prescribes and cause the certificate and assignment to be mailed or delivered to the transferee or to the Department.

Except as provided in Section 56-19-370, the transferee shall, promptly after delivery to him of the vehicle, execute the application for a new certificate of title in the space provided therefor on the certificate or as the Department prescribes and cause the certificate and application to be mailed or delivered to the Department.

Except as provided in Section 56-19-370, and as between the parties, a transfer by an owner is not effective until the provisions of this section have been complied with.

S.C. Code Ann. § 56-19-360 (2018).

Section 56-19-370 of the South Carolina Code provides as follows:

If a dealer buys a vehicle and holds it for resale and procures the certificate of title from the owner within forty-five days after delivery to him of the vehicle, he need not send the certificate to the Department of Motor Vehicles, but, upon transferring the vehicle to another person other than by the creation of a security interest, promptly **shall** execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee and of any lienholder holding a security interest created or reserved at the time of the resale and the date of his security agreement, in the spaces provided on the certificate or as the department prescribes, and mail or deliver the certificate to the department with the transferee's application for a new certificate.

S.C. Code Ann. § 56-19-370 (2018) (emphasis added).

When Sections 56-19-210, -240, -360, and -370 are read together, they lead to the inevitable conclusion that while private buyers and sellers must trade from a current title with near immediate transfer or assignment of title, dealers have limited relaxation of this requirement. Because dealers must arrange for the payment of liens and for the signatures of buyers and sellers on odometer statements, often by way of secured powers of attorney, they are allowed up to forty-five days for providing title and means of registration. There is no authorization for a dealer to exceed the forty-five days before title or registration is provided, which is also the maximum amount of time allowed for dealer issued temporary license plates under Section 56-3-210(C). If not registered after forty-five days after purchase, the buyer has no legal means of driving the vehicle he or she purchased. If it is driven, the drivers are subject to being arrested or ticketed if their temporary license plates have lapsed or been made to appear that they were valid beyond the forty-five days.

Section 56-15-30 provides that unfair methods of competition and unfair or deceptive practices as defined in Section 56-15-40 are unlawful.<sup>2</sup> S.C. Code Ann. § 56-15-30 (2018). Section 56-15-40(1) states that it is a violation of paragraph (a) of Section 56-15-30 for any motor vehicle

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<sup>2</sup> Section 56-15-30 further provides that in construing whether an act or practice constitutes an unfair method of competition, or an unfair or deceptive act or practice, courts may be guided by the definitions in the Federal Trade Commission Act (15 U.S.C. A. § 45).

dealer to engage in any action which is arbitrary, in bad faith, or unconscionable, and which causes damage to any of the parties or the public. S.C. Code Ann. § 56-15-40 (2018).<sup>3</sup>

Finally, Section 56-15-350 provides that any license issued under Title 15 including those issued to dealers, may be denied, suspended, or revoked, if the applicant or licensee or any agency of the applicant or licensee acting for the applicant or licensee is determined to have committed any of the acts outlined in the paragraphs enumerated in Section 56-15-350. A license may be suspended for violating any provision of Chapter 15. S.C. Code Ann. § 56-15-30 (2018). Section 56-15-350 sets no statutory limit on the Department's decision regarding the sanction, be it denial, cancellation, suspension, or revocation if any of the statutory violations are established to exist. The Department has adopted Procedure DE-002 in an effort to standardize the implementation of sanctions.

### **Analysis**

Appellant raises many theories and arguments which obfuscate the real issue, which is that in each of the three sales involved, Appellant failed to perform its most fundamental duty owed to its customers. It failed to timely provide its customers with title and registration. While Appellant claims that it did everything that it could to facilitate procurement of titles and registration for its customers, in none of these instances did those actions occur until after the customers had filed complaints with the Department and an investigation commenced. It was within the hearing officer's discretion to infer that Appellant should have taken additional prompt action.

During the hearing and in its appellate brief, Appellant expended an inordinate amount of time focusing on the argument that its actions in failing to timely deliver titles to its buyers were not willful and thus, are not sanctionable. Procedure DE-002 provides that the Department may assess a four-point violation for each willful failure to deliver title to a buyer or the Department within forty-five days of the date of sale. The Department's policy states:

“The failure to deliver title violation” is not considered “willful” if the dealer can provide a written statement, substantiated by a Dealer Licensing and Audit Unit

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<sup>3</sup> “Arbitrary conduct is readily definable and includes acts which are unreasonable, capricious or nonrational; not done according to reason or judgment; depending on will alone.” Brown v. Dick Smith Nissan, Inc., 414 S.C. 101, 105, 777 S.E.2d 208, 210-211 (2015) (quoting Taylor v. Nix, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (1992)). Bad faith has been defined as the opposite of good faith. Brown v. Dick Smith Nissan, Inc. While it may include actual or constructive fraud or an intent to mislead, it also includes neglect or refusal to fulfill some duty or some contractual obligation. Id.

agent, identifying a prior seller or lien holder who has failed to deliver the title as required by law.

DE-002-Dealer Sanctions, Section III, C.2.

Here, “willfulness” does not appear to be the basis for the Department’s sanction, or an issue in this case. The word, “willful” was not used by the Department in its two sanctions letters<sup>4</sup> nor in its Notice of Suspension. The Department specifically stated that Appellant’s license was being suspended for “Engaging in any action which causes damage to any party or to the public. (Failure to deliver title within 45 days of date of sale).” Also, testimony elicited from the Department evidences that its witnesses did not believe Appellant’s conduct to be willful, and that its investigating agent accepted at “face value” the dealer’s statements identifying prior sellers or lienholders who failed to deliver title by law. Appellant’s arguments as to willfulness are irrelevant.<sup>5</sup>

Appellant argues that the hearing officer improperly labeled Appellant’s violations. Procedure DE-002B’s Dealer Performance Violation Sanction Table contains an offense for “Engaging in any action which causes damage to any party or to the public” and provides for a sanction range of six points to revocation.<sup>6</sup> It also includes a violation for “Willful failure to deliver title to buyer or department within 45 days of sale,” which carries a four-point violation. Appellant argues that the hearing officer’s order improperly suggests that “failure to deliver title” can be considered a lesser included violation even though it is delineated as a separate offense. The Court disagrees.

In short, Appellant’s position is that because the Department assessed fewer points against it for each of the three violations than what was specifically outlined in the sanction table, it should not be held accountable. While Appellant clearly failed to deliver title to the three complainants as required by law, its actions caused damage to the parties and the public which is what was charged in the Notice of Suspension. The hearing officer correctly held that Procedure DE-002 contains no

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<sup>4</sup> Appellant claims that the Department erred in only sending it two sanction letters, rather than three. This has no merit. Appellant was clearly on notice of three violations and the nature of those violations as outlined in the Notice of Suspension. It was afforded and fully availed itself of the opportunity to litigate their propriety. In fact, Appellant noted several times in the record that it was present at the hearing to defend against only the three incidents outlined in the notice.

<sup>5</sup> In his findings of fact, the hearing officer concluded that Appellant acted willfully. In his conclusions of law however, he noted that the Department did not establish willfulness so as to allow for penalties pursuant to Procedure DE-002’s performance violation sanction table for “Willful failure to deliver title to buyer or department within 45 days of date of sale.”

<sup>6</sup> The hearing officer’s order inadvertently stated that this offense provided for a sanction of up to six points.

provision that asserts that the Department is limited to any category. The Department's assistant manager and supervisor of its dealer and licensing audit unit testified that multiple violations could arise from a single complaint, and that a particular act could potentially be regarded as more than one violation listed on the sanction table depending upon the circumstances. Appellant was clearly not prejudiced by the Department assigning fewer sanction points per violation than those called for by the table for three violations for "Engaging in any action or which causes damage to any party or to the public."

Appellant also argues that the hearing officer improperly found that Procedure DE-002 was not mandatory. It does not appear to the Court that the hearing officer made this specific finding and the Court questions whether the issue is properly before it. Nevertheless, while Procedure DE-002 is a guideline used by the Department to facilitate uniformity of sanctions within the Department, it is not law. It has never been submitted to the General Assembly for promulgation as a regulation. It is an internal procedure referenced within its text as guidelines "To set forth guidelines for the application and administration of sanctions for dealers who are not in compliance with the minimum statutory requirements or who have willfully committed violations of the law." (emphasis added). Appellants have cited to no legal authority to suggest that any alleged deviation or failure by the Department to strictly observe an internal procedure invalidates an otherwise legal agency action. The Department's general practice is not tantamount to a legal requirement. See Joseph v. S.C. Dep't of Labor, Licensing & Regulation, 417 S.C. 436, 790 S.E.2d 763 (2016) (policy or guidance issued by agency other than in a regulation does not have the force or effect of law). The only laws involved in this matter are Sections 56-19-210; -240; -360; and -370, making the failure to title within forty-five days a clear violation of law; Section 56-15-350 which gives the Department discretion to sanction dealers for any violation listed therein; and Sections 56-15-30 and -40 declaring unfair or deceptive acts or practices within the scope of the chapter unlawful.

Substantial evidence supports the hearing officer's findings that the complainants and public were harmed by Appellant's actions, and that Appellant engaged in unfair or deceptive acts. In each of three instances, Appellant failed to timely deliver title as required by law. None of the titles were delivered until after complaints had been filed. All title deliveries far exceeded the forty-five-day period permitted by law; two of the delays exceeded twice the statutory minimum, and in another case, the wait was more than three times the maximum time permitted. In making his findings of fact and conclusions of law, it was within the hearing officer's discretion to consider

the length of the delays. Without titles, the complainants were not legally permitted to drive their vehicles beyond forty-five days, and could not sell them had they elected to do so. The record is devoid of evidence that Appellant offered any of these customers the opportunity to return their vehicles in exchange for the purchase price, a loaner or rental vehicle, or anything else to mitigate against the lack of title and registration. Complainants were left without recourse other than to file complaints with the Department.

In argument, Appellant's counsel suggested that the dealership offered to buy back the vehicle from Complainant No. 1. No testimony or actual evidence of this offer is otherwise found in the record and is contradicted by Complainant No. 1's testimony in which he stated that he never received any communication from Appellant, and that he personally tried to contact Appellant prior to filing his complaint and still did not receive a response.<sup>7</sup> Complainant No. 1 testified that he ultimately had to sell the vehicle at a loss because he did not have the title.

While the Department's investigator accepted Appellant's explanations that other parties were to blame for its failure to timely secure titles, this only served to vindicate Appellant of a finding of willfulness. It did not absolve Appellant of its responsibility. Appellant's actions in repeatedly failing to timely deliver title resulted in damage to complainants and the public. It was within the hearing officer's discretion to draw the conclusion that Appellant's actions were arbitrary, unreasonable, capricious, or non-rational.

The hearing officer's finding that the three Bills of Sales and Affidavits and Notifications of Sale contained misleading statements regarding the existence of liens is also supported by the record. Evidence indicates that in those two instances, Appellant had some expectation that the liens would be satisfied based on near contemporaneous payment. In another instance, Appellant sold a vehicle when it was unsure of the status of any lien on the vehicle, and the identity and whereabouts of the true owner. Appellant had a myriad of excuses as to why these occurrences were not its fault. In one instance, Appellant cast blame on the auction house that sold the vehicle stating that it improperly completed the Bill of Sale, and the signature was not authorized. While Appellant tried to distance itself from the auction, the auction was not the seller. See Williams v. Toyota of Jefferson, Inc., 655 F.Supp. 1081 (E.D. La. 1987) (an auction was not the transferor of

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<sup>7</sup> It is appalling that Appellant blamed Complainant No. 1 for its failure to deliver title. The fact that Complainant No. 1 could have returned the vehicle to the auction pursuant to the auction rules, does not absolve Appellant of its responsibilities under State law.

a vehicle but merely provided the means – an auction services – by which the transferor of the vehicle); Indus. Indemnity v. Arena Auto Auction, 638 F.Supp. 1030 (D. Minn. 1986) (auction selling vehicle to a dealer on behalf of another dealer had no ownership interest and was not a transferor). The auction was Appellant’s agent on the sales document and as a merchant, Appellant still had a duty to warrant title under Section 36-2-312. S.C. Code Ann. § 36-2-312 (2003). Regardless of phraseology, the document clearly called for disclosure of known liens.

Appellant’s remaining arguments were either not properly preserved or are without merit. It is axiomatic that an issue cannot be raised for the first time on appeal and must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). If the non-prevailing party has raised an issue in the lower court which was not ruled upon, a party must successfully file and serve a motion to alter or amend judgment in order to preserve the issue for appellate review. Pon, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). Moreover, even without consideration of any of the hearsay which may truly be objectionable, there is ample other evidence to support the hearing officer’s conclusion. Id.; Rule 220(c), SCACR (an appellate court may affirm for any reason appearing in the record on appeal).

**ORDER**

Based on the foregoing,

**IT IS HEREBY ORDERED** that the decision of the South Carolina Department of Motor Vehicles is **AFFIRMED**.

**AND IT IS SO ORDERED.**



Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

July 31, 2018  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman  
Judicial Aide to Deborah Brooks Durden

July 31, 2018  
Columbia, South Carolina

**FILED**

July 31, 2018

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Toyota of Greer,

Appellant,

vs.

South Carolina Department of Motor  
Vehicles,

Respondent.

Docket No. 18-ALJ-21-0011-AP

**ORDER DENYING APPELLANT'S  
MOTION FOR RECONSIDERATION**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the motion of counsel for Appellant, Toyota of Greer, seeking reconsideration of the Court's Order filed on July 31, 2018. The motion merely reiterates the arguments made in Appellant's Brief, which were carefully considered and ruled upon by this Court. This motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore,

**IT IS HEREBY ORDERED** that Appellant's Motion for Reconsideration is **DENIED**.  
**AND IT IS SO ORDERED.**



Deborah Brooks Durden  
Administrative Law Judge

September 4, 2018  
Columbia, South Carolina

**FILED**

September 4, 2018

SC ADMIN. LAW COURT

**CERTIFICATE OF SERVICE**

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman  
Judicial Aide to Deborah Brooks Durden

September 4, 2018  
Columbia, South Carolina

**FILED**

September 4, 2018

SC ADMIN. LAW COURT

Nikki R. Haley  
Governor



Kevin A. Shuck  
Executive Director

State of South Carolina  
Department of Motor Vehicles

June 27, 2017

TOYOTA OF GREER  
13770 EAST WADE HAMPTON BLVD  
GREER, SC 29651

CUSTOMER NO: 30343986  
DEALER LICENSE NO: 30643

OFFICIAL NOTICE OF DEALER LICENSE SUSPENSION

BEGINNING DATE: 12:01 AM, 07/27/2017 ENDING DATE: 11:59 PM, 08/02/2017

DEAR CUSTOMER:

You may not sell or attempt to effect the sale of any motor vehicle during the above time period. "Sale," shall include the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and any option, subscription or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle.

AUTHORITY: S.C. Code Ann. §§ 56-15-30, -40, -350, -19-210, -240, -360 and -370

REASON:

The Department of Motor Vehicles (DMV) has determined that you have violated registration, dealer licensing and titling provisions of Title 56 and have accumulated 12 or more points listed below under DMV Policy DE-002 pertaining to Dealer Sanctions.

POST DATE	PTS	REFERENCE#	VIOLATION
07/27/2016	04	16/664-30643	Engaging in any action which causes damage to any party or to the public (Failure to deliver title within 45 days of date of sale)

On June 28, 2016 Sheila Gilliam filed a complaint with the SCDMV Dealer License & Audit Unit stating that she purchased a 2007 Ford Explorer from Toyota of Greer on March 29, 2016 and that she had not received the title for the vehicle as of the date of the complaint. During the investigation, Dealer Agent Jason Benjamin found that the title was delivered July 6, 2016 which is 99 days from the date of purchase.

08/08/2016 04 16/746-30643 Engaging in any action which causes damage to any party or to the public (Failure to deliver title within 45 days of date of sale)

On July 11, 2016 Scott Bocook with Quality Auto of Anderson filed a complaint with the SCDMV Dealer License & Audit Unit stating that his dealership purchased a 2000 Chrysler 300 from Toyota of Greer on February 26, 2016 and that he had not received the title for the vehicle as of the date of the complaint. During the investigation, Dealer Agent Jason Benjamin found that the title was delivered July 18, 2016 which is 143 days from the date of purchase.

06/02/2017 04 17/445-30643 Engaging in any action which causes damage to any party or to the public (Failure to deliver title within 45 days of date of sale)

On April 26, 2017, Tonya McCallister filed a complaint with the SCDMV Dealer License & Audit Unit stating that she purchased a 2006 Mazda RX8 from Toyota of Greer on February 10, 2017 and that she had not received the title as of the date of the complaint. During the investigation, Dealer Agent Jason Benjamin found that Toyota of Greer did not have the title to the Mazda RX8 when it was sold to Ms. McCallister and that the vehicle was registered on May 15, 2017, which is 94 days from the date of purchase.

**DEALER LICENSE:**

Your dealer license must be removed from public view and secured at your licensed location during the suspension period. Unless otherwise cancelled, suspended, revoked, or expired, your dealer license will return to an active status at the end of the suspension period and must then be redisplayed prominently at the established place of business.

**DEALER PLATES:**

All dealer plates issued to the dealership must be secured inside the licensed location during the suspension period. Unless otherwise cancelled, suspended, revoked, or expired, your dealer plates will return to an active status at the end of the suspension period and may then continue to be used in a lawful manner.

**REINSTATEMENT:**

Unless otherwise cancelled, suspended, revoked, or expired, your dealer license and plates will return to an active status at the end of the suspension period without any further action required on your part.

**APPEAL:**

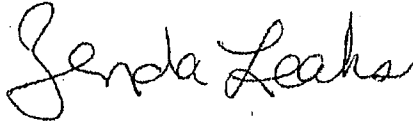
As provided by the Administrative Procedures Act, you are entitled to contest this suspension with the Office of Motor Vehicle Hearings. Pursuant to *S.C. Code Ann. §56-5-2952*, there is a non-refundable \$200.00 filing fee to request an administrative hearing. The fee must be paid by cash, certified check, or money order. Bring your completed request, including the \$200.00 filing fee, to the Office of Motor Vehicles Hearings, Edgar A. Brown Building, 1205 Pendleton Street, Suite 325, Columbia, SC 29201. Your written request must be received no later than ten (10) days after the date of this notification. Should you fail to request a review as described above, this notice will be final.

All inquiries regarding a hearing should be directed to the Division of Motor Vehicle Hearings, telephone number (803) 734-3201.

VIOLATING THE PROVISIONS OF THIS SUSPENSION ORDER SUBJECTS YOUR  
DEALER LICENSE TO PERMANENT REVOCATION.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT  
CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

Sincerely,

A handwritten signature in cursive script that reads "Zenda Leaks". The signature is written in black ink and is positioned above the typed name and title.

Zenda Leaks, Assistant Manager  
Dealer License & Audit Unit

THE STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT  
OFFICE OF MOTOR VEHICLE HEARINGS

**FILED**  
JUL 06 2017  
SCOMVH

Toyota of Greer, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 South Carolina Department of Motor Vehicles, )  
 )  
 Respondent. )

**REQUEST FOR CONTESTED  
CASE HEARING**

YOU WILL PLEASE TAKE NOTICE that the undersigned, on behalf of Toyota of Greer, 13770 East Wade Hampton Boulevard, Greer, South Carolina, 29651, email: [jrh@mceautomotive.com](mailto:jrh@mceautomotive.com), Phone Number: 866-599-0837, Customer Number: 30343986, Dealer License Number: 30643, requests a Contested Case Hearing regarding the Official Notice of Dealer License Suspension received by the dealership on June 28, 2017.

The subject of the hearing will be the Notice contained in a letter dated June 27, 2017 from Zenda Leaks, Assistant Manager, Dealer License & Audit Unit, State of South Carolina, Department of Motor Vehicles.

The letter notices a suspension of this dealership's license because there were three complaints in over 3,000 transactions in the past year relating to the delivery of titles to used cars that other parties were tardy in delivering to Toyota of Greer.

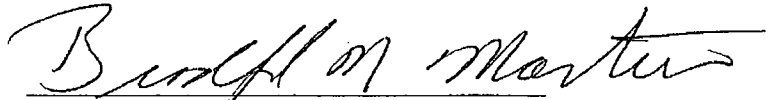
The points totaled 12 over a one year period, but these points were improperly assigned to the dealership. The letter cites as the reason for awarding of points on three separate occasions: failure to deliver title within 45 days of the date of sale. The letter also references

DMV Policy DE-002 which assigns 4 points when there is a **willful** failure to deliver title, not simply a failure to deliver a title.

In all three instances, Toyota of Greer did everything humanly possible to obtain these missing titles and was eventually successful. All three cars are properly registered with the proper titles. Therefore, Toyota of Greer respectfully requests that the suspension be lifted and that the points be removed from its record. A copy of the Department's letter is attached is as Exhibit A.

July 6, 2017

Respectfully submitted,



Bradford N. Martin, Esq., SC Bar No. 3658  
Laura W. H. Teer, Esq., SC Bar No. 16698  
BRADFORD NEAL MARTIN & ASSOCIATES, P.A.  
Post Office Box 10410  
Greenville, South Carolina 29603  
864.552.9990  
864.552.9992 (facsimile)

**ATTORNEYS FOR APPELLANT  
TOYOTA OF GREER**

Nikki R. Haley  
Governor



State of South Carolina  
Department of Motor Vehicles

Kevin A. Simpson  
Executive Director

**FILED**  
JUL 06 2017  
SCOMVH

June 27, 2017

TOYOTA OF GREER  
13770 EAST WADE HAMPTON BLVD  
GREER, SC 29651

CUSTOMER NO: 30343986

DEALER LICENSE NO: 30643

OFFICIAL NOTICE OF DEALER LICENSE SUSPENSION

BEGINNING DATE: 12:01 AM, 07/27/2017 ENDING DATE: 11:59 PM, 08/02/2017

DEAR CUSTOMER:

You may not sell or attempt to effect the sale of any motor vehicle during the above time period. "Sale," shall include the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and any option, subscription or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle.

AUTHORITY: S.C. Code Ann. §§ 56-15-30, -40, -350, -19-210, -240, -360 and -370

REASON:

The Department of Motor Vehicles (DMV) has determined that you have violated registration, dealer licensing and titling provisions of Title 56 and have accumulated 12 or more points listed below under DMV Policy DE-002 pertaining to Dealer Sanctions.

POST DATE	PTS	REFERENCE#	VIOLATION
07/27/2016	04	16/664-30643	Engaging in any action which causes damage to any party or to the public (Failure to deliver title within 45 days of date of sale)

On June 28, 2016 Sheila Gilliam filed a complaint with the SCDMV Dealer License & Audit Unit stating that she purchased a 2007 Ford Explorer from Toyota of Greer on March 29, 2016 and that she had not received the title for the vehicle as of the date of the complaint. During the investigation, Dealer Agent Jason Benjamin found that the title was delivered July 6, 2016 which is 99 days from the date of purchase.

08/08/2016 04 16/746-30643 Engaging in any action which causes damage to any party or to the public (Failure to deliver title within 45 days of date of sale)

On July 11, 2016 Scott Bocoock with Quality Auto of Anderson filed a complaint with the SCDMV Dealer License & Audit Unit stating that his dealership purchased a 2000 Chrysler 300 from Toyota of Greer on February 26, 2016 and that he had not received the title for the vehicle as of the date of the complaint. During the investigation, Dealer Agent Jason Benjamin found that the title was delivered July 18, 2016 which is 143 days from the date of purchase.

06/02/2017 04 17/445-30643 Engaging in any action which causes damage to any party or to the public (Failure to deliver title within 45 days of date of sale)

On April 26, 2017, Tonya McCallister filed a complaint with the SCDMV Dealer License & Audit Unit stating that she purchased a 2006 Mazda RX8 from Toyota of Greer on February 10, 2017 and that she had not received the title as of the date of the complaint. During the investigation, Dealer Agent Jason Benjamin found that Toyota of Greer did not have the title to the Mazda RX8 when it was sold to Ms. McCallister and that the vehicle was registered on May 15, 2017, which is 94 days from the date of purchase.

**DEALER LICENSE:**

Your dealer license must be removed from public view and secured at your licensed location during the suspension period. Unless otherwise cancelled, suspended, revoked, or expired, your dealer license will return to an active status at the end of the suspension period and must then be redisplayed prominently at the established place of business.

**DEALER PLATES:**

All dealer plates issued to the dealership must be secured inside the licensed location during the suspension period. Unless otherwise cancelled, suspended, revoked, or expired, your dealer plates will return to an active status at the end of the suspension period and may then continue to be used in a lawful manner.

**REINSTATEMENT:**

Unless otherwise cancelled, suspended, revoked, or expired, your dealer license and plates will return to an active status at the end of the suspension period without any further action required on your part.

**APPEAL:**

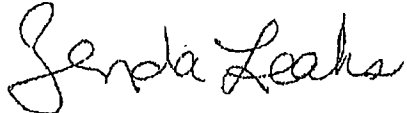
As provided by the Administrative Procedures Act, you are entitled to contest this suspension with the Office of Motor Vehicle Hearings. Pursuant to *S.C. Code Ann. §56-5-2952*, there is a non-refundable \$200.00 filing fee to request an administrative hearing. The fee must be paid by cash, certified check, or money order. Bring your completed request, including the \$200.00 filing fee, to the Office of Motor Vehicles Hearings, Edgar A. Brown Building, 1205 Pendleton Street, Suite 325, Columbia, SC 29201. Your written request must be received no later than ten (10) days after the date of this notification. Should you fail to request a review as described above, this notice will be final.

All inquiries regarding a hearing should be directed to the Division of Motor Vehicle Hearings, telephone number (803) 734-3201.

VIOLATING THE PROVISIONS OF THIS SUSPENSION ORDER SUBJECTS YOUR  
DEALER LICENSE TO PERMANENT REVOCATION.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT  
CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

Sincerely,

A handwritten signature in cursive script that reads "Zenda Leaks". The signature is written in black ink and is positioned above the typed name and title.

Zenda Leaks, Assistant Manager  
Dealer License & Audit Unit

THE STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT  
OFFICE OF MOTOR VEHICLE HEARINGS

Toyota of Greer, )  
 )  
 Appellant, )  
 ) **CERTIFICATE OF MAILING**  
 v. )  
 )  
 South Carolina Department of Motor Vehicles, )  
 )  
 Respondent. )

I, Peggy McComb, Legal Assistant at Bradford Neal Martin & Associates, PA, hereby certify that due and proper service of the document(s) affixed hereto and described below was made by depositing a true copy(ies) of same in the United States Mail at Greenville, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon.

**DOCUMENTS: REQUEST FOR CONTESTED CASE HEARING**

**COUNSEL/PARTY SERVED:**

Zenda Leaks, Assistant Manager  
Dealer License & Audit Unit  
South Carolina Department of Motor Vehicles  
Post Office Box 1498  
Blythewood, South Carolina 29016

**FILED**  
JUL 06 2017  
SCOMVH

Date: July 6, 2017

Peggy McComb  
Peggy McComb

**THE STATE OF SOUTH CAROLINA**  
**In the Administrative Law Court**

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APPEAL FROM THE DEPARTMENT OF MOTOR VEHICLES  
Docket No. 17-OMVH-05-3345-CC

Toyota of Greer ..... Appellant,

v.

South Carolina Department of Motor Vehicles ..... Respondent.

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**NOTICE OF APPEAL**

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Appellant Toyota of Greer appeals the Final Order and Decision of the Office of Motor Vehicle Hearings dated December 12, 2017, which sustained the Official Notice of License Suspension dated June 27, 2017. The Appellant received notice of the Final Order and Decision on December 12, 2017. A copy of the Final Order and Decision is enclosed with this Notice.

Appellant reserves its rights to its previously filed Motion to Reconsider as filed with the Office of Motor Vehicle Hearings.

Appellant submits the following grounds for appeal:

1. The OMVH Hearing Officer erred as a matter of fact and law in failing to rescind the South Carolina Department of Motor Vehicle's (SCDMV) suspension of Appellant's license when the Department of Motor Vehicle's own mandatory internal procedure required that the license suspension be rescinded.
2. The OMVH Hearing Officer erred as a matter of fact and law in failing to rescind Appellant's license suspension based upon the testimony and evidence presented.
3. The OMVH Hearing Officer erred as a matter of fact and law in failing to rescind Appellant's license suspension when the SCDMV admitted that the assessment of 4-point violations required a finding of a "willful failure to deliver ~~file to buyer of~~

**FILED**

JAN 11 2018

department within 45 days of date of sale” and the definition of “willful” as contained in the SCDMV’s internal Procedure DE-002 was not met.

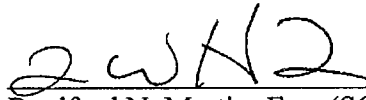
4. The OMVH Hearing Officer erred in failing to find that Procedure DE-002 is mandatory and that the SCDMV is not at liberty to alter the requirements of Procedure DE-002 to remove the requirement that a failure to deliver title within 45 days be “willful” in assessing a 4-point violation.
5. The OMVH Hearing Officer erred in improperly finding that the SCDMV charged Appellant with failure to deliver title within 45 days of sale as a subset of the separate charge of “Engaging in any action which causes damage to any party or to the public” when the SCDMV’s own documents contained evidence to the contrary and SCDMV Form DE-002B lists the violations separately and assigns different points for each violation.
6. The OMVH Hearing Officer erred in improperly finding that that DE-002 “contains no provision that asserts the Department is limited to any particular category” when, Procedure DE-002 is mandatory, the SCDMV submitted two Sanction Reports which list the violation as “failure to deliver title within 45 days of date of sale,” and the SCDMV’s Official Notice assessed a single 4 point violation against Appellant for each complaint.
7. The OMVH Hearing Officer erred as a matter of fact and law in improperly finding that Appellant violated S.C. Code § 56-15-40(1) when there was no evidence of willfulness or that Appellant engaged in an action “which is arbitrary, in bad faith, or unconscionable” but rather that the acts of others caused the delay in delivering the title.
8. The OMVH Hearing Officer erred as a matter of fact and law in finding that the SCDMV met its burden of proof to show a violation of the South Carolina Dealer’s Act.
9. The OMVH Hearing Officer erred as a matter of fact and law by improperly finding that Appellant provided false or misleading Bills of Sale or Affidavits & Notifications of Sale.
10. The OMVH Hearing Officer erred by finding that Appellant argued willfulness was not shown merely because of the large volume of sales rather than because the definition of willfulness in the SCDMV’s Procedure DE-002 was not met.
11. The OMVH Hearing Officer erred as a matter of fact as to the testimony of Appellant regarding the sale to Quality Auto.
12. The OMVH Hearing Officer erred in improperly finding that the Bill of Sale to Quality Auto of Anderson was prepared and signed by a representative of the Appellant.

13. The OMVH Hearing Officer erred by failing to find that the Non-Secure Power of Attorney and Power of Attorney for Odometer Disclosure listed Mr. Gorman as having a Greenville, South Carolina address and as to Appellant's testimony regarding Mr. Gorman.
14. The OMVH Hearing Officer erred in failing to find that Section III.C.3. of DMV Procedure DE-002 requires that a Sanctions Report be completed if the administrative investigation reveals violations and the SCDMV did not present evidence of a Sanction Report related to Tonya McCallister's complaint.
15. The OMVH Hearing Officer erred in misstating Appellant's testimony regarding its subscription to Carfax, or a similar vehicle history database, and finding that this prevented Appellant from receiving a lien release from Ford Motor Credit.
16. The OMVH Hearing Officer erred in improperly admitting hearsay evidence in the form of notes made by Agent Benjamin in the Dealer Comments section of the document entitled "Investigation of Complaint Regarding Dealer/Wholesaler."
17. The OMVH Hearing Officer's decision was in violation of constitutional and statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and characterized by abuse of discretion.
18. Any and all other properly preserved issues as permitted by SCALC Rules 33 and 37.

Pursuant to Rule 33(A), SCALCR, Appellant is Toyota of Greer, 13770 East Wade Hampton Boulevard, Greer, South Carolina, 29651, email: [jrh@mceautomotive.com](mailto:jrh@mceautomotive.com), Phone Number: 866-599-0837. Appellant is represented by Bradford N. Martin ([bmartin@bnmlaw.com](mailto:bmartin@bnmlaw.com)), and Laura W.H. Teer ([lteer@bnmlaw.com](mailto:lteer@bnmlaw.com)), of the law firm of Bradford Neal Martin & Associates, P.A., Post Office Box 10410, Greenville, South Carolina 29603. The firm's telephone number is 864-552-9990.

[SIGNATURE ON FOLLOWING PAGE]

January 11, 2018



Bradford N. Martin, Esq. (SC Bar No. 3658)  
Laura W. H. Teer, Esq. (SC Bar No. 16698)  
BRADFORD NEAL MARTIN & ASSOCIATES, P.A.  
Post Office Box 10410  
Greenville, South Carolina 29603  
864.552.9990 (phone)  
864.552.9992 (facsimile)

**ATTORNEYS FOR APPELLANT  
TOYOTA OF GREER**

Counsel for Respondent:

Philip S. Porter, Esq.  
S.C. Department of Motor Vehicles  
PO Box 1498  
Blythewood, SC 29016  
philip.porter@scdmv.net

**STATE OF SOUTH CAROLINA  
OFFICE OF MOTOR VEHICLE HEARINGS**

South Carolina Department of Motor Vehicles	)	Docket No. 17-OMVH-05-3345-CC
	)	
Petitioner,	)	
	)	
vs.	)	<b>FINAL ORDER AND DECISION</b>
	)	
Toyota of Greer,	)	
	)	
Respondent.	)	

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**Appearances:**

For the Petitioner: (Witnesses) Zenda Leaks, Assistant Manager -Dealer  
Licensing & Audit Unit Agent - SCDMV  
Philip S. Porter, Esquire – Deputy General  
Counsel - SCDMV  
Jason Benjamin- Dealer Agent –SCDMV  
Lisa Bird- Team Leader – SCDMV  
Scott Bocook – Quality Auto Sales.

For Respondent: Bradford Martin - Respondent’s Attorney  
Robert Hogan – Sales Manager & Vice President  
- Greer Toyota  
Toni Powell – Wholesale Title Clerk – Greer  
Toyota

**Other Information:**

Dealer License # 30643  
Type of Hearing: Denial of Dealer License Suspension  
(S.C. Code Ann, §§ 56-3-30, -40, -350, -19-210, -360 and -370, and Procedure DE-002)

**INTRODUCTION**

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) pursuant to a request for a contested case hearing filed by Toyota of Greer, the Respondent. Toyota

of Greer is a licensed motor vehicle dealer in the State of South Carolina. The SCDMV sent Respondent an Official Order of License Suspension dated June 27, 2017. It stated the grounds for the revocation were violations of *S.C. Code Ann.* §§ 56-3-30, -40, -350, -19-210, -360 and -370, and Procedure DE-002 due to an accumulation of twelve sanction points each alleging “engaging in any action which causes damage to any party or the public (Failure to deliver title within 45 days of the date of sale).

The Respondent filed a timely request for a hearing, and pursuant to written notice to the parties, a hearing was held before me on October 02, 2017 at the Greer Municipal Court, Greer, South Carolina. After reviewing the entire record and considering all the evidence, I conclude that the Respondent’s Dealer License Suspension is sustained.

#### **FINDINGS OF FACT**

Having observed the witnesses and reviewed the exhibits presented at the hearing and closely passed upon their credibility, and having taken into consideration the burden of persuasion by the parties, I make the following Findings of Fact by a preponderance of the evidence.

1. Complaint 16/746 involves the Complaint of Scott Bocook, manager of Quality Auto of Anderson. His complaint was filed on or about July 11, 2016, and received by the Department on July 14, 2016. He alleged that he purchased a vehicle, a 2000 Chrysler 300 VIN 2C3HE66G4YA198153 for his dealership on February 26, 2016, but had not received the title as of the date of the complaint, a time a period of 135 days. While the Respondent produced evidence that the vehicle was sold through an auction, a Bill of Sale was prepared and signed by a representative of the Respondent and Mr. Bocook containing the following declaration:

I, Toyota of Greer (Seller), 13770 E. Wade Hampton BL Greer SC 29651 state that on the 26 day of February, Yr. 2016 The following vehicle Make Chrysler Model 300M Body Type 4 Dr Year 2000 Vehicle Identification 2C3HE66G4YH198153 License Plate No. 37456 was sold to Quality Auto of Anderson L Buyer 911 Whitehall Rd Anderson SC 29625 And the above vehicle is free of all liens and encumbrances in the buyer’s name except:

---

(List here any mortgages, liens or encumbrances)

The line for the listing of liens or encumbrances was left blank. There was a lien on the vehicle to a title loan establishment from the customer who had sold the vehicle to Respondent. Thus, the above statement concerning the absence of a lien was false. Respondent produced testimony of Wholesale Title Clerk Toni Powell and a copy of a check prepared for the title lender the day before the sale. Ms. Powell asserted in testimony that the signature on the bill of sale on behalf of seller was not authorized. In any case it was not withdrawn or corrected and was allowed to become part of the Department's official records of the sale through the agency of the auction or otherwise. Ms. Powell stated that she was aware that secondary lenders, such as title lenders, often took up to twenty-one days to give a lien satisfaction. Nevertheless, she testified that the known location of the particular title lender had closed, that she was referred to another location and had difficulty reaching it, and was ultimately referred to the Spartanburg location.

Upon Agent Benjamin's investigation of the complaint, he recorded remarks from Ms. Powell that Toyota of Greer and associated dealerships owned by MCE had had a lot of turnover and movement within their finance departments due to employee terminations, which were the result of bad deals. Respondent's argument at hearing differed somewhat from Ms. Powell's statement, asserting that the dealership had done everything possible to deliver title, that the vehicle itself that Respondent had sold was a piece of junk and had nominal value, and that if there was any fault at all it was Mr. Bocook's by failing return the vehicle through the rules of the auction rather than insisting on receiving the title. Ms. Powell also submitted a written statement in which she added that once she located a title lender branch that could supply a lien release, she still had to wait for the manager to return from vacation. She also stated that once the branch was located and the manager was available, the title was delivered to the auction. She also testified the check to the title lender cleared on March 8, 2016, ten days after the sale. Agent Benjamin confirmed that title was provided on July 18, 2016, 143 days after purchase. This was after receipt of the complaint from the Department.

2. Complaint No. 17/445 involves Tonya McAllister. On or about April 26, 2017 she filed a complaint with the Department stating she had purchased a 2006 Mazda VIN JM1FE173560201810 from Toyota of Greer on February 10, 2017 and had not yet received title. It turned out that the vehicle had a lien of record by prior owner, Matthew Gorman. Department

records showed that Respondent had Mr. Gorman sign a power of attorney to authorize Respondent's representative to take steps to sell that vehicle on January 3, 2017.

In connection with the sale, an Affidavit & Notification of Sale of Motor Vehicle was executed. As the name implies, it is in the form of a sworn affidavit. In pertinent part it contained this statement:

Personally appeared before me, MCE Automotive, Inc, d/b/a Toyota of Greer 13770 E. Wade Hampton BL Greer SC 29651 who being duly sworn, deposes and says that on the 10th day of February 2017 he sold the following motor vehicle: Make MASDA Model R&B Year 2006 Identification (Serial) No. JM1FE173560201810 License No. \_\_\_\_\_ was sold to TONYA GREEN MCCALLISTER 112 TIMBERBROOK RD GAFFNEY CHEROKEE SC 29340-5948 Deponent further states that there are no liens or encumbrances on the said vehicle except as listed below:

Lienholder WELLS FARGO DEALER SERVICES Amount 6020.00

Address PO BOX 997517 SACRAMENTO CA 95899-7517 Date 02/10/2017

Wells Fargo Dealer Services is the lender that financed the sale of the vehicle to Ms. McAllister. There was no mention of any other lienholder. The document was signed by Ms. McAllister and by a representative of the Respondent, a different representative than either the one that signed the affidavit for Ms. Gilliam's transaction (FOF #3) or the person that signed the bill of sale in Mr. Bocook's transaction.

In investigating the complaint, Mr. Benjamin asked for a statement from Ms. Michelle Taylor, Title Clerk, and she gave him a written one in which she stated that the customer who traded the vehicle in was not the actual owner, and she did not know the status of the title until she enlisted the aid of a dealership in North Carolina. She was not able to get in touch with the actual owner until mid-April. She was unable to say whether the sales personnel had requested a driver's license from the customer initially because she was not in sales. Thus, when the sale was made and the affidavit signed, the Respondent had no idea whether or not there was a lien.

3. Complaint No. 16/664 involved Sheila Gilliam. On or about June 28, 2016 she filed a complaint with the Department stating that she had purchased a 2007 Ford Explorer VIN1FMEU65E07UB13396 from Toyota of Greer on March 29, 2016 and had not yet received title. It turned out that the vehicle had a lien of record to Ford Motor Credit by prior owner, James

and Catherine Derrick. Department records showed that Respondent had James Derrick and Catherine Derrick sign powers of attorney to authorize Respondent's representative to take steps to sell that vehicle on January 21, 2016. Respondent submitted a contract whereby the Derricks contracted to trade in the Explorer to Respondent on January 26, 2016. Respondent also submitted a title inquiry report that it pulled on February 4, 2016 revealing the lien to Ford Motor Credit. Respondent nevertheless sold Ms. Gilliam the Explorer on March 29, 2016.

In connection with the sale, an Affidavit & Notification of Sale of Motor Vehicle was executed. As the name implies, it is in the form of a sworn affidavit. In pertinent part it contained this statement:

Personally appeared before me, MCE Automotive, Inc, d/b/a Toyota of Greer 13770 E. Wade Hampton BL Greer SC 29651 who being duly sworn, deposes and says that on the 29th day of March 2016 he sold the following motor vehicle: Make FORD Model Explorer Year 2007 Identification (Serial) No. 1FMEU65E07UB13396 License No. \_\_\_\_\_ was sold to Sheila Gilliam 337 Belcher Road Boiling Springs Spartanburg SC 29316 Deponent further states that there are no liens or encumbrances on the said vehicle except as listed below:

Lienholder \_\_\_\_\_ Amount N/A

Address \_\_\_\_\_ Date 3/29/2016

As indicated above neither the identity of any lienholder or an address was written into the blanks. The document was signed by Ms. Gilliam and by a representative of the Respondent who was a different representative than the person who signed the bill of sale to Mr. Bocook of Quality Auto. The dealership had knowledge of the lien of Ford Motor Credit not later than February 4, 2016. It had fifty-four days to clear the lien before it sold the Explorer to Ms. Gilliam, but it did not. Respondent did sell the vehicle to Ms. Gilliam and the title was not provided within forty-five days. Ms. Gilliam filed her complaint. Agent Jason Benjamin, in investigating the complaint, established its basic accuracy. He requested a statement regarding the circumstances of the failure to provide title and received a statement from Ms. Michelle Taylor, the Title Clerk. She stated that the vehicle was traded into the dealership on January 25, 2016, *without a title*, and there was an issue getting the title from Ford Motor Credit. Ford Motor Credit faxed a lien release on July 5, and Ms. Gilliam's title was delivered to the Department on July 6, 2016, ninety-nine days after the

purchase and at least one hundred fifty three days after Respondent was aware of the existence of the lien. She testified that she contacted Ford Motor Credit a number of times, and the company confirmed the debt had been paid four years ago. She said the company nevertheless had to contact research for old files. When the vehicle was finally titled, however, it was by letter and not by a release of lien on a title. She testified that the dealership previously subscribed to Carfax, but no longer did, and did not subscribe to R.L. Polk, Experian or other service for title data from outside South Carolina.

4. Section III.C.3. of DMV Procedure DE-002 requires that a Sanctions Report be completed if the administrative investigation reveals violations. Petitioner presented two Sanction Reports which list the violation as "Failure to deliver title within 45 days of date of sale." (Petitioner Exs. 6 and 8) Four points are assessed as the sanction on both reports. Petitioner did not present evidence of a Sanction Report related to Tonya McAllister's complaint.

I find that the assessments of 4 point violations were made pursuant to a finding by Petitioner of a "willful failure to deliver title to buyer or department within 45 days of date of sale." Having made these findings, Petitioner is required to show that the failures to deliver title were "willful" as defined in its Procedure DE-002.

Ms. Leaks, the Assistant Manager in the Dealer Licensing & Audit Unit, agreed that DMV policy states:

"The failure to deliver title violation" is not considered "willful" if the dealer can provide a written statement, substantiated by a Dealer Licensing and Audit Unit agent, identifying a prior seller or lien holder who has failed to deliver the title as required by law. (Petitioner Ex. 5, p. 6)

Ms. Leaks testified that she authored the June 27, 2017 Official Notice that included three separate violations. She stated that she had not included the word "willful" in the sanction letter but rather listed the violation as "Engaging in any action which causes damages to any party or to the public." Ms. Leaks admitted that the Notice then stated "(Failure to deliver title within 45 days of date of sale)" and that four points had been assessed against Toyota of Greer for each of the violations listed. Ms. Leaks admitted that the failure to provide title within 45 days had to be "willful" in order for a four point sanction to be assessed against the dealer.

5. Two license renewals of MCE Automotive d/b/a Toyota of Greer were put into evidence. Both were signed by a Russell Antici as owner or corporate officer. Both indicated that Robert Hogan was the sales manager. His testimony indicated he was also a partner. The 2017 renewal lists Mr. Hogan also as Vice President. On the renewal with effective dates of June 15, 2015 to June 15, 2016, the dealership checks "yes" for question 6, which asks if the applicant has a Dealer Manual.

6. The 2007 Dealer Manual was placed in evidence. Page 2-2 of the Manual clearly states the requirement that a dealer must deliver the title or registration to the customer within a 45 day period after the sale. It gives the dealer the option of giving all necessary documentation required to title the vehicle to the customer and maintaining a customer signed receipt by which the customer acknowledges the responsibility for titling and registering. There is no evidence in the record that this option was taken for any of the complaints discussed above.

7. Department Upstate Team Lead Lisa Bird testified that in her experience unless a dealer was arranging the financing of a sale of a known payoff for a trade in or the like, it was not the practice of the franchised dealer industry to make sales without a title. She testified that the Department typically does not sanction dealers if they fail to deliver title by only a few days more than forty-five days.

8. Mr. Robert Hogan, Sales Manager and Vice President of Toyota of Greer, however, testified and he forthrightly stated the dealership's position. When asked why the dealership did not avoid selling vehicles before it had secured titles for the buyers, he said while the dealership did not want trouble with the buyers and did not want trouble with the Department because it was bad for business, the dealership had to buy and sell vehicles before the titles were secured, because if the dealership did not do that the same sales would be made by the competition. Mr. Hogan also testified that the dealership(s) had made 25,182 sales in the last three years.

#### CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. §1-23-660(A) (Supp. 2016), the Hearing Officers of the OMVH, effective January 1, 2006, preside over contested case hearings involving certain suspensions, cancellations, or revocations of licenses issued by the Department. All hearings

presided over by the Hearing Officers of the OMVH are contested case hearings and must be conducted in accordance with the Administrative Procedures Act (“APA”) and the rules of procedure for the OMVH. § 1-23-660(B) (Supp. 2015). Furthermore, all appeals from final decisions of the Hearing Officers are to the South Carolina Administrative Law Court in accordance with its rules of procedure. § 1-23-660(D) (Supp. 2015).

2. Basic administrative law principles establish that an agency bears the burden of proof in an enforcement action. See Peabody Coal Co. v. Ralston, 578 N.E.2d 751 (Ind. Ct. App. 1991); Randy R. Lowell and Stephen P. Bates, South Carolina Administrative Practice and Procedure, 200-201 (2004). Since Petitioner asserts the affirmative of an issue, i.e. the enforcement of a wholesaler’s license suspension or revocation, and since it will be subject to an adverse ruling if no evidence is introduced, Petitioner bears the burden of proof in this matter. See Alex Sanders & John S. Nichols, Trial Handbook for South Carolina Lawyers § 9.3 at 366 (2nd ed. 2001).

3. The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass’n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992); see also Doe v. Doe, 324 S.C. 492, 502, 478 S.E.2d 854, 859 (Ct. App. 1996) (holding that a trial judge, when acting as a finder of fact, “has the authority to determine the weight and credibility of the evidence before him”).

4. S.C. Code Ann. § 56-15-10, related to the regulation of dealers and wholesalers, provides:

As used in this chapter the following words shall, unless the text otherwise requires, have the following meanings:

(a) “Motor vehicle”, any motor driven vehicle required to be registered under Section 56-3-110. This definition does not include motorcycles.

...

(h) “Dealer” or “motor vehicle-dealer”, any person who sells or attempts to effect the sale of any motor vehicle. These terms do not include:

(1) distributors or wholesalers.

(2) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court.

(3) public officers while performing their official duties.

(4) persons disposing of motor vehicles acquired for their own use and so used in

good faith and not for the purpose of avoiding the provisions of law. Any person who effects or attempts to effect the sale of more than five motor vehicles in any one calendar year is considered a dealer or wholesaler, as appropriate, for purposes of this chapter.

(5) finance companies or other financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles they own as an incident to payments made under policies of insurance.

...

(l) "Sale," shall include the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and any option, subscription or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise.

(m) "Fraud," shall include, in addition to its normal legal connotation, the following: a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; and an intentional failure to disclose a material fact.

....

5. Pursuant to S.C. Code Ann. § 56-15-310(A) (2006), a person who engages in business as a dealer or wholesaler in the State of South Carolina must first make an application to the Department for a license. The license applies to only one place of business of the applicant and is not transferable to another person or place of business with certain exceptions for the exhibition and sale of motor homes by licensed dealers.

6. With regard to records that dealers and wholesalers are required to keep, § 56-15-340(A)(2006) provides:

Every dealer or wholesaler shall keep complete records of each transaction under which a motor vehicle is transferred for a period of not less than four years from the date of the transaction. The records must show the true name and correct address of the person or persons from whom the motor vehicle was acquired and the date of the transaction; a correct description of the vehicle, when transferred; the true name and correct address of the person to whom the motor vehicle was transferred; and the date of the transaction. The description of the motor vehicle must include the vehicle identification number, make, model, type of body, and the odometer readings at the time the motor vehicle was transferred to and from the

dealer or wholesaler. These records must be open at all reasonable times for inspection and copying by the Department of Motor Vehicles or any of its duly authorized agents.

7. With the exception of dealers selling or offering for sale a new vehicle for which there is a manufacturer's certificate of origin issued to the dealer, it is unlawful for a person to sell or offer for sale or mortgage a vehicle required to be registered and licensed in South Carolina unless a valid certificate of title has been issued for it. §56-19-210.

8. Section 56-19-360, addressing the duties of transferor and transferee with regard to title upon the sale of a motor vehicles provides:

If an owner, manufacturer or dealer transfers his interest in a vehicle other than by the creation of a security interest, he shall, at the time of the delivery of the vehicle, execute an assignment and warranty of title to transferee in the space provided therefore on the certificate or as the Department of Motor Vehicles prescribes and cause the certificate and assignment to be mailed or delivered to the transferee or to the Department.

Except as provided in Section 56-19-370, the transferee shall, promptly after delivery to him of the vehicle, execute the application for a new certificate of title in the space provided therefore on the certificate or as the Department prescribes and cause the certificate and application to be mailed or delivered to the Department.

Except as provided in Section 56-19-370, and as between the parties, a transfer by an owner is not effective until the provisions of this section have been complied with.

9. Section 56-19-370 provides:

If a dealer buys a vehicle and holds it for resale and procures the certificate of title from the owner within forty-five days after delivery to him of the vehicle, he need not send the certificate to the Department of Motor Vehicles, but, upon transferring the vehicle to another person other than by the creation of a security interest, promptly shall execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee and of any lienholder holding a security interest created or reserved at the time of the resale and the date of his security agreement, in the spaces provided on the certificate or as the department prescribes, and mail or deliver the certificate to the department with the transferee's application for a new

certificate.

10. Pursuant to §56-3-210 (C):

A dealer of new or used vehicles may issue to the purchaser of a vehicle at the time of its sale a temporary license plate....a dealer may not use a temporary license plate for any other purpose, which includes but is not limited to vehicle demonstration, employee use, or transporting vehicles from one location to another.

11. Pursuant to §56-15-40(1):

It shall be deemed a violation of paragraph (a) of Section 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.

12. Section 56-15-30(a) further provides that “[u]nfair methods of competition and unfair or deceptive acts or practices as defined in §56-15-40 are hereby declared to be unlawful.”

13. Section 56-15-350 (Supp. 2015) provides that any license issued under Chapter 15 of Title 56 may be denied, suspended, or revoked, if the applicant or licensee or an agency of the applicant or licensee acting for the applicant or licensee is determined to have:

- (a) made a material misstatement in the application for the license;
- (b) violated any provision of this chapter;
- (c) been found by a court of competent jurisdiction to have committed any fraud connected with the sale or transfer of a motor vehicle;
- (d) employed fraudulent devices, methods, or practices in connection with meeting the requirements placed on dealers and wholesalers by the laws of this State;
- (e) been convicted of any violation of law involving the acquisition or transfer of a title to a motor vehicle or of any violation of law involving tampering with, altering, or removing motor vehicle identification numbers or markings;
- (f) been found by a court of competent jurisdiction to have violated any federal or state law regarding the disconnecting, resetting, altering, or other unlawful tampering with a motor vehicle odometer, including the provisions of 49 U.S.C. §§32701-32711 (Title 49, Subtitle VI, Part C, Chapter 327);

- (g) refused or failed to comply with the Department's reasonable requests to inspect or copy the records, books, and files of the dealer or wholesaler or failed to maintain records of each motor vehicle transaction as required by this chapter or by state and federal law pertaining to odometer records; or
- (h) given, loaned, or sold a dealer license plate to any person or otherwise to have allowed the use of any dealer license plate in any way not authorized by § 56-3-2320. Any dealer license plate issued to a dealer or wholesaler pursuant to § 56-3-2320 which is determined by the department to be improperly displayed on any vehicle or in the possession of any unauthorized person is prima facie evidence of a violation of Section 56-15-350 by the dealer or wholesaler to whom the license plate was originally issued.

The Department must notify the licensee or applicant in writing at the mailing address provided in the application of its intention to deny, suspend, or revoke his license at least twenty days in advance. A licensee or applicant desiring a hearing must file a request in writing with the OMVH within ten days of receiving notice of the proposed denial, suspension, or revocation of his dealer's or wholesaler's license.

14. I conclude that the evidence showed that the Respondent committed the violation of failing to deliver title within the statutory period. In each complaint reviewed in this case, the failure to deliver was accompanied by a false and misleading bill of sale or affidavit and notification of sale, stating that there were no liens not listed on those statements. In at least two of the complaints, it is clear that someone within the dealership knew of the existence of lien on the vehicles when they were sold to a subsequent buyer, but the dealership sold them anyway and stated (or someone on the dealership's behalf stated) to the buyers that the liens did not exist. On the other complaint, it appears that the dealership was unsure of the status of any lien on the vehicle, and in fact unsure of the identity and whereabouts of the true owner, when the vehicle was sold. In each case, the titles were delayed well beyond the statutory time limit for titling or registering the vehicles.

Respondent insisted that even though the Department's Official Notice did not mention willful violation in it according to DE-002, the Department must be held to a willfulness standard and the Department could not prove willfulness. This is partly because of Respondent claim that

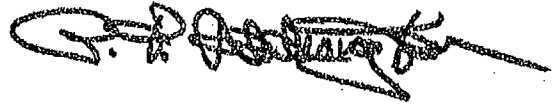
due to the volume of business it handled, occasional problems were inevitable and could happen to anyone. In addition, the Respondent also claimed a proper understanding of DE-002 was that there could be no violation so long as the dealer produced a statement that another prior seller or lienholder had not produced the title as required by law. That is not exactly what happened in these transactions. In the Bocook Complaint, Respondent asserted that it knew of the title loan lien before it put the vehicle on the market, it either had to know or not know where to contact the lender and receive the title. The testimony indicated it did not, but it sold the vehicle anyway. Ms. Powell addressed efforts to find the lender but was not able to do what needed to be done within the forty-five days. In Ms. Gilliam's complaint, the Respondent's evidence indicated that it was aware of the lien for fifty-four days before selling the vehicle to Ms. Gilliam. An "issue" with Ford Motor Credit extended her wait another ninety-nine days after her purchase. In Ms. McAllister's complaint, the vehicle was sold to her before the dealership even knew the identity of the prior owner.

Official Notice of License Suspension listed each complaint as "[e]ngaging in any action which causes damage to any party or to the public" with a parenthetical "(failure to deliver within 45 days of date of purchase)." Each of the warning letters used the same terminology. DE-002 contains no provision that asserts the Department is limited to any particular category. An action which causes damage to any party or to the public is a separate violation on the grid. It provides for sanction points up to 6 for each repetition. The actions of the Respondent in this matter meet the definition of "arbitrary" or "unreasonable, capricious or non-rational; depending on the will alone." Respondent chose, for reasons of competition or convenience, to sell vehicles for which it had not secured a title. It followed this by signing documents with misleadingly false assurances that the vehicles had no liens other than a lien financing the purchase. It violated the law by failing to provide title until well after the statutory deadline, and after the customers had complained to the Department. The customers were damaged by Respondent's acts by being unable to drive legally or sell the vehicles.

Therefore, I conclude that the denial of Dealer License Suspension for Toyota of Greer is sustained.

**ORDER**

Based upon the above findings of facts and conclusions of law,  
**IT IS HEREBY ORDERED** that the Dealer License Suspension is sustained.  
**AND IT IS SO ORDERED.**



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Phillip T. Addington  
OMVH Senior Hearing Officer

December 12, 2017  
Greer, South Carolina

CERTIFICATE OF SERVICE

I, Frances L. Inabinet, hereby certify that I have this date served this Order upon all parties to this caused by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

*Frances L. Inabinet*

Frances L. Inabinet

December 12, 2017

Columbia, South Carolina

**THE STATE OF SOUTH CAROLINA  
In the Administrative Law Court**

APPEAL FROM THE DEPARTMENT OF MOTOR VEHICLES  
Docket No. 17-OMVH-05-3345-CC

Toyota of Greer ..... Appellant,

v.

South Carolina Department of Motor Vehicles ..... Respondent.

**PROOF OF SERVICE**

I, Peggy McComb, Legal Assistant at Bradford Neal Martin & Associates, PA, hereby certify that due and proper service of the document(s) affixed hereto and described below was made by depositing a true copy(ies) of same in the United States Mail at Greenville, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon.

**DOCUMENTS:** Notice of Appeal  
Request for Transcript

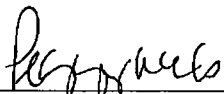
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Office of Motor Vehicle Hearings  
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Suite 325  
Columbia, SC 29201

Phillip Addington, Senior Hearing Officer  
1205 Pendleton Street  
Suite 325  
Columbia, SC 29201

Date: January 11, 2018

  
\_\_\_\_\_  
Peggy McComb

**FILED**

JAN 11 2018

SC ADMIN. LAW COURT

**THE STATE OF SOUTH CAROLINA  
In the Administrative Law Court**

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APPEAL FROM THE DEPARTMENT OF MOTOR VEHICLES  
Docket No. 18-ALJ-21-0011-AP

Toyota of Greer ..... Appellant,

v.

South Carolina Department of Motor Vehicles ..... Respondent.

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**APPELLANT'S BRIEF**

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**FILED**

**MAR 29 2018**

**SC ADMIN. LAW COURT**

## STATEMENT OF THE ISSUES ON APPEAL

- I. Whether the Hearing Officer erred in failing to rescind the suspension of Appellant's license when the Department of Motor Vehicle's own mandatory internal procedures required that the license suspension be rescinded.
- II. Whether the Hearing Officer erred in failing to rescind Appellant's license suspension based upon the testimony and evidence presented.
- III. Whether the Hearing Officer erred in failing to rescind Appellant's license suspension when the SCDMV admitted that the assessment of 4-point violations required a finding of a "willful failure to deliver title to buyer or department within 45 days of date of sale" and the definition of "willful" as contained in the DMV's internal Procedure DE-002 was not met.
- IV. Whether the Hearing Officer erred in failing to find that Procedure DE-002 is mandatory and that the Department's employees are not at liberty to alter the requirements of Procedure DE-002 to remove the requirement of willfulness in assessing a 4-point violation.
- V. Whether the Hearing Officer erred in improperly finding that the DMV charged Appellant with failure to deliver title within 45 days of sale as a subset of the separate charge of "Engaging in any action which causes damage to any party or to the public" when the DMV's own documents contained evidence to the contrary and DMV Form DE-002B lists the violations separately and assigns different points for each violation.
- VI. Whether the Hearing Officer erred in improperly finding that that DE-002 "contains no provision that asserts the Department is limited to any particular category" when, Procedure DE-002 is mandatory, the DMV submitted two Sanction Reports which list the violation as "failure to deliver title within 45 days of date of sale," and the DMV's Official Notice assessed a single 4 point violation against Appellant for each complaint.
- VII. Whether the Hearing Officer erred in improperly finding that Appellant violated S.C. Code § 56-15-40(1) when there was no evidence of willfulness or that Appellant engaged in an action "which is arbitrary, in bad faith, or unconscionable" but rather that the acts of others caused the delay in delivering the title.
- VIII. Whether the Hearing Officer erred in finding that the DMV met its burden of proof to show a willful failure to deliver title and a violation of the South Carolina Dealer's Act.
- IX. Whether the Hearing Officer erred by improperly finding that Appellant provided false or misleading Bills of Sale or Affidavits & Notifications of Sale.

**FILED**

**MAR 29 2018**

**SC ADMIN. LAW COURT**

- X. Whether the Hearing Officer erred by finding that Appellant argued willfulness was not shown merely because of the large volume of sales rather than because the definition of willfulness in the DMV's Procedure DE-002 was not met.
- XI. Whether the Hearing Officer erred as to the testimony of Appellant regarding the sale to Quality Auto.
- XII. Whether the Hearing Officer erred in improperly finding that the Bill of Sale to Quality Auto of Anderson was prepared and signed by a representative of the Appellant.
- XIII. Whether the Hearing Officer erred by failing to find that the Non-Secure Power of Attorney and Power of Attorney for Odometer Disclosure listed Mr. Gorman as having a Greenville, South Carolina address and as to Appellant's testimony regarding Mr. Gorman.
- XIV. Whether the Hearing Officer erred in failing to find that Section III.C.3. of DMV Procedure DE-002 requires that a Sanctions Report be completed if the administrative investigation reveals violations and the DMV did not present evidence of a Sanction Report related to Tonya McCallister's complaint.
- XV. Whether the Hearing Officer erred in misstating Appellant's testimony regarding its subscription to Carfax, or a similar vehicle history database, and finding that this prevented Appellant from receiving a lien release from Ford Motor Credit.
- XVI. Whether the Hearing Officer erred in improperly admitting hearsay evidence in the form of notes made by Agent Benjamin in the Dealer Comments section of the document entitled "Investigation of Complaint Regarding Dealer/Wholesaler."
- XVII. Whether the Hearing Officer's decision was in violation of constitutional and statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and characterized by abuse of discretion.

## STATEMENT OF THE CASE

This proceeding is an appeal of the South Carolina Department of Motor Vehicle's issuance of an Official Notice of Dealer License Suspension against Toyota of Greer dated June 27, 2017. Toyota of Greer denied that it committed a willful failure to deliver title or willfully engaged in any action which caused damage to any party or to the public.

Toyota of Greer filed a Request for Contested Case Hearing on July 6, 2017. On October 2, 2017 a hearing was held in Greer before Hearing Officer Phillip T. Addington of the Office of Motor Vehicle Hearings. Officer Addington issued an Order dated December 12, 2017, which sustained the Official Notice of License Suspension dated June 27, 2017. Appellant filed its Notice of Appeal with this Court on January 11, 2018.

## STATEMENT OF FACTS

Toyota of Greer has been in business since 2004. (R. 176) Their title department processed over 25,000 vehicle titles in the past three years. (R. 176-177) The dealership hired staff and implemented a process to efficiently handle the paperwork necessary to obtain titles for vehicles traded in or purchased by the dealership and forwarded to the next buyer. (R. 181-184) However, the actions of previous owners and lenders can interfere with the dealership's ability to timely obtain a title.

The South Carolina Department of Motor Vehicles has implemented a uniform and fair system in which points are charged for violations and has developed a required procedure for the application and administration of any sanctions against dealers. (Petitioner Ex. 5, R. 436-450) This uniform and fair system was designed to insure that any of the several hundred dealerships in South Carolina were treated fairly and equally. This Appeal is asking that the uniform and fair system be applied to Toyota of Greer.

DMV Procedure DE-002 is the official internal procedure regarding the issuance of dealer sanctions. (R.436) The first page of Procedure DE-002 states that DMV employees are required to read and follow these procedures. (R.436)

Section III. D.2. states that points are assessed utilizing DMV Form DE-002B. (Petitioner Ex. 5, p. 6, R.441) Section III.D.4 requires the Dealer License and Audit Unit (DLAU) to adhere to the written process to insure uniform and fair assessment of sanctions. (R. 441) Table DE-002B lists violations for "Engaging in any action which causes damage to any party or to the public" as requiring a sanction of 6 points to revocation, and "Willful failure to deliver title to buyer or department within 45 days of date of sale" as requiring a sanction of 4 points. (R. 449) The Table does not provide for lesser point sanctions.

Section III.C.3 requires that a Sanctions Report be completed if the administrative investigation reveals violations. (R.441) The DMV presented only two Sanction Reports<sup>1</sup> which list the violation as "Failure to deliver title within 45 days of date of sale." (Petitioner Exs. 6 and 8, R. 451 and 469). Four points are assessed as the sanction on both reports.

Zenda Leaks, Assistant Manager of the DLAU, agreed in her testimony that DMV policy states:

"the failure to deliver title violation" is not considered "willful" if the dealer can provide a written statement, substantiated by a Dealer Licensing and Audit Unit agent identifying a prior seller or lien holder who has failed to deliver the title as required by law. (R. 67-68, Petitioner Ex. 5, p. 6, R.441)

Despite her agreement, DLAU employees ignored the policy and sanctioned Toyota of Greer on the three following transactions. This Appeal requests that this uniform and fair system

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<sup>1</sup>There were three claimed violations, but only two Sanction Reports.

be applied to Toyota of Greer, so the sanction that will deprive prospective customers the right to purchase cars and employees to be paid may be reversed.

#### Sheila Gilliam Purchase

The Derricks traded in a 2007 Ford Explorer on January 25, 2016 and certified there was no lien on the vehicle. (Respondent Ex. 3. R. 314) They failed to deliver the title as required by law.

Therefore, Toyota of Greer took upon itself to solve the problem. Title Clerk Toni Powell ran an inquiry through the DMV's electronic registration system on February 4, 2016, which showed a lien from Ford Motor Credit (FMC) had not been satisfied.<sup>2</sup> (Respondent Ex. 4 R. 316, Transcript R.135-136) The previous owners certified it was paid. Therefore, Ms. Powell contacted FMC who confirmed that the loan had been paid several years earlier, but it neglected to file the paperwork. (R.137) Because the account was closed years earlier, FMC had difficulty providing the lien release and Powell had to call multiple times until she was finally able to speak with an employee who was able to provide the release. (R. 139-140) Thus, the delay fell at the feet of the lienholder, FMC.

Toyota of Greer sold the Ford Explorer to Sheila Gilliam on March 29, 2016, (Petitioner Ex. 9, R. 494) expecting FMC to satisfy the paid off loan within the 45 days. Toyota of Greer was able to receive a lien release letter from FMC dated June 28, 2016. (Respondent Ex. 5, R.317) Ms. Powell then expedited the process to complete the title work on the Explorer as shown by the selection of the expedited process at the top of the Form 400. (Respondent Ex. 6,

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<sup>2</sup> South Carolina law provides that the lienholder holds the title when a car is financed. SC Code Ann. §56-19-265(A)

R. 318) Toyota of Greer received the duplicate title and completed the tag work on July 6, 2016. (Petitioner Ex. 10, R. 495)

The DMV received a complaint from Sheila Gilliam on the same date FMC finally issued its lien release letter. DLAU Field Agent Jason Benjamin investigated and received a written statement from the dealership explaining that the lienholder FMC was the cause that the title was not issued within 45 days. (Petitioner Ex. 8, R. 475) He also admitted that he accepted Toyota of Greer's written statements as "substantiated" as required by DMV Procedure DE-002. (R. 123-124)

DLAU Agent Benjamin further testified that he considered any failure to deliver the title within 45 days as "willful," but later admitted that this was not consistent with the DMV Procedure DE-002 as to the definition of "willful". (R.113-116) Therefore, the 4 points were wrongfully charged against Toyota of Greer.

#### **Quality Auto of Anderson Purchase**

Tara Hughes traded in a 2000 Chrysler 300 on February 13, 2016 (Petitioner Ex. 7, R. 463-464) and reported a lien on the vehicle with Carolina Title Loans. (Respondent Ex. 7, R.320) Thus, the title was held by the lender. She agreed it should be paid off as part of her deal. Toyota of Greer's Ms. Powell called the Spartanburg branch listed on the payoff sheet and was told that the title was being held at the Greer branch. (R.143-144) She contacted the Greer branch and received the payoff amount. (Transcript, R. 144, Respondent Ex. 7, R. 320) Powell sent the check to the lender at the Greer branch on February 25, 2016, which was cashed on March 8, 2016, well within the 45-day window. (Transcript, R. 144, Respondent Ex. 8, R. 321) Thus, there was nothing prohibiting the lender from forwarding the title or Toyota of Greer from reselling the Chrysler 300.

Toyota of Greer sent the car to America's Auto Auction (AAA) where on February 26, 2016, Quality Auto of Anderson paid \$300 for it. (Respondent Ex. 1, R.309)<sup>3</sup> All the paperwork was signed by employees of the Auction. Mr. Bocook was aware that he purchased the vehicle with "Title Attached." (Transcript, R. 31, Respondent Ex. 1, R. 309) This meant that the car did not have the title at the time it was presented at auction. (R. 31) Bocook also was aware that he could notify the auction if he did not have the title within 30 days and either return the vehicle or wait to receive the title. (Transcript, R. 33, Respondent Ex. 2, R. 313) Instead, Bocook decided not to return the vehicle but to sell the car without the title. (R.35-37)

When the title was not received within the expected time, Toyota of Greer's Powell began to call Carolina Title Loans' Greer branch (that had cashed the payoff check). (R. 145-146) After leaving several messages with no response, Powell contacted the Spartanburg branch and was informed that the manager was on vacation. (R.147) When the manager returned, she released the lien and sent the title to Powell. (R.147) Powell was able to process the title paperwork and deliver the title to Quality Auto of Anderson on July 18, 2016. Once again, the problem was with a previous lienholder.

Bocook sold the vehicle before he received the title (R. 35-37) and then filed a complaint on July 14, 2016 with the DMV. DLAU Agent Benjamin again investigated (R. 96), again received a written statement that the lienholder had not provided the title within 45 days, and again (Petitioner Ex. 6, R. 458) accepted it as substantiated (R. 123-124). Benjamin again ignored DMV policy and wrongfully issued the 4 point sanction against Toyota of Greer.

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<sup>3</sup> The Bill of Sale contained in Petitioner's Exhibit 7 at p. 7 is not a form used by Toyota of Greer and was not signed by any employee of Toyota of Greer. (R.148)

### Tonya McCallister Purchase

Matthew Gorman traded in a 2006 Mazda to Toyota of Greer on January 3, 2017. (R.508-509) Mr. Gorman informed the dealership that there was no lien on the car and that he lost the title but would provide a duplicate. (R.161) When he failed to bring the title, Toyota of Greer's title clerk, Michelle Taylor, ran an inquiry through the DMV electronic registration system to apply for a duplicate. (R.161) It showed a different owner and Ms. Taylor attempted to contact Mr. Gorman to get the paperwork necessary to request a duplicate. (R. 161-162) Meanwhile, Tonya McCallister purchased the Mazda on February 10, 2017. (Petitioner Ex. 12, R. 511)

When Mr. Gorman did not return Ms. Taylor's phone calls, she enlisted the help of one of the salesmen to contact him. (R. 162) When Ms. Taylor finally spoke with Mr. Gorman, she learned that this car had been titled in North Carolina and that Mr. Gorman had originally financed the purchase which placed the title in the lender's hands. While Gorman had satisfied the lien, the lienholder had failed to file a satisfaction and he was having difficulty getting the title. (R. 162-163) Taylor immediately had a sister store in North Carolina run a North Carolina vehicle inquiry report. (Transcript R, 163-164, Respondent Ex. 9, R. 322) She then contacted Chase Bank and obtained a lien release the same day. (Transcript, R. 165-166, Respondent Ex. 10, R. 323) Once again, the delay was caused by a previous lender not filing the lien satisfaction.

A duplicate title was issued in North Carolina on May 6, 2017. (Petitioner Ex. 12, R. 506) Taylor attempted to process the paperwork with the DMV but was unable to do so because taxes were owed on the car by Ms. McCallister. (Petitioner Ex. 11, R. 502) Ms. Taylor tried unsuccessfully to contact Ms. McCallister regarding the tax issue. (Petitioner Ex. 11, R. 502) She

then contacted DLAU Agent Benjamin, who advised her to process the paperwork as "title only."

Ms. McCallister submitted a complaint to the DMV on April 26, 2017, which was again investigated by Agent Benjamin. (R.109-110) Benjamin again received a written statement from the dealership that the prior seller failed to deliver the title. (Petitioner Ex. 11, R.502), which he accepted as substantiated (R. 123-124). No Sanction Report was presented related to Ms. Gilliam's complaint. Nevertheless, he wrongfully issued a 4-point penalty against Toyota of Greer, once again ignoring DMV policy.

### ARGUMENT

"It is important . . . that the habits of thinking in a free country should inspire caution in those entrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another."

-George Washington, Farewell Address to the People of the United States,  
September 19, 1796

### INTRODUCTION

Toyota of Greer, an employer of over 75 people, and seller of over 25,000 vehicles in the last three years, faces the specter of shutting down for an entire week that will steal one week's wages from its loyal employees and cost the dealership thousands of dollars. It will also deprive prospective purchasers the right to buy a car. All this because certain employees of the DMV have admittedly not followed their own procedure. Rather than "inspiring caution," those individuals entrusted with the uniform and fair administration of the law have taken it upon themselves to rewrite the law.

It is undisputed that in all three instances, there was nothing willfully done by Toyota of Greer, and the problem lay at the feet of the people who previously owned or financed the cars. Now, the DLAU employees, ignoring their own mandatory internal procedures designed to make sure such a result would not happen, seek to shut the business down and not only harm the employees, but the public as well. Toyota of Greer respectfully requests that uniformity and fairness be restored and that this suspension be reversed.

#### **I. STANDARD OF REVIEW**

This Court is empowered to reverse the decision of the OMVH Hearing Officer if substantial rights of Toyota of Greer have been prejudiced because the administrative findings, inferences, conclusions, or decisions are (1) violative of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. Code Ann. § 1-23-380(5).

Basic administrative law principles establish that an agency bears the burden of proof in an enforcement action. Since the DMV asserts the affirmative of an issue, i.e. the enforcement of a dealer's license suspension, and since it will be subject to an adverse ruling if no evidence is introduced, the DMV bears the burden of proof in this matter. See *Carter v. Columbia and Greenville R.R. Co.*, 1883 WL 4856, at \* 6 (S.C. 1883); Alex Sanders and John S. Nichols, *Trial Handbook for South Carolina Lawyers*, Fourth Edition, 2008, § 9:3, p. 398.

**II. THE DMV'S OWN MANDATORY PROCEDURE REQUIRES THAT THE LICENSE SUSPENSION BE RESCINDED (Issues I, II, III, IV, VIII, XVII)**

**A. The Department Admittedly Failed to Follow its Mandatory Procedure(s) and the Hearing Officer Erred in Finding Otherwise**

Suspending a business the size of Toyota of Greer has significant economic consequences. The Department has published a 10-page mandatory procedure, entitled DE-002, that requires: 1) managers to have employees read the procedure and acknowledge that they have read it; and 2) employees to follow the procedures. (Petitioner Ex. 5, R.436) The purpose of the procedure is to "establish uniform guidelines for the allocation and administration of sanctions." (Petitioner Ex. 5, Section II, R.439) With respect to complaints, the procedure clearly and unequivocally requires:

**2. Willful Failure to Deliver Title Complaints**

Dealers are required to execute an assignment of title to the buyer... the "failure to deliver title violation" **is not considered willful** if the dealer can provide a written statement which is substantiated by a Dealer Licensing and Audit Unit Agent identifying a prior seller or lienholder who has failed to deliver the title as required by law." (Petitioner Ex. 5, R.441) (emphasis added)

Therefore, in order to sanction a dealer, there must be a willful failure on the part of the dealer to deliver the title; and not by a prior seller or lienholder. This requirement is mandatory to insure uniformity and fairness.

The DLAU employees defiantly testified that they did not require such willfulness when investigating the complaints against Toyota of Greer, but admitted that the procedure required it. (R.82, 87-88, 113-116) To allow these certain employees to unilaterally change the requirement would defeat the policy purpose of establishing uniform and fair guidelines for the administration of sanctions.

Second, the procedures unequivocally show that there cannot be a finding of willfulness if the problem with a title comes from a previous owner or lienholder. (R. 441) In all three situations, it is undisputed that the problems came from previous owners or lienholders. Therefore, it is impossible for Toyota of Greer to be willful and to be charged these points and have its license suspended.

The situation in the Quality Auto matter clearly shows that the problem was with the previous lender, and not Toyota of Greer. When the car was traded in, Toyota of Greer sent the check to pay off the existing loan. (Respondent Ex. 8, R 321) The check was cashed by the previous lender within days of the first sale, well within the 45 days. (Respondent Ex. 8, R 321) However, the lender never satisfied the paid-for lien due to the fact that they had closed their office in Greer. (R. 146-147) This was not the fault of Toyota of Greer, but the fault of the previous lender. Eventually, the lien satisfaction was recorded and Toyota of Greer took immediate action to have the title issued.

The undisputed facts show that in the Tonya McAllister matter, the person who traded in the car promised to provide the title. (R. 161) When he did not, it took some doing to find out that the title was actually in his name in North Carolina. (R.161-163) Again, the problem was with the previous owner and lienholder and not Toyota of Greer. Again, when the lienholder complied, Toyota of Greer took immediate action to have the title issued.

In the third matter, Sheila Gilliam, it is undisputed that there were no liens when she traded in her car. (R. 137) The only problem was that the previous lender had not bothered to satisfy the lien when it was paid years before. Therefore, it took a while to get that previous lender to cooperate to satisfy a lien that had already been paid. Once again, this was not the fault of Toyota of Greer, and the procedure very clearly states that the DMV cannot claim a willful

violation of a failure to deliver a title when a prior seller or lienholder has failed to deliver as required by law. Finally, these explanatory statements of Toyota of Greer were accepted by the DLAU Investigator and in testimony confirmed to be true.

The DLAU has also failed to follow its own procedure that requires the Audit Unit Manager to review and approve any suspension before it is issued. (Petitioner Ex. 5, R. 441) The Department had the burden of proof, and has failed to present any evidence that the Audit Unit Manager reviewed the matter and approved the suspension. On this ground alone, the suspension requires reversal.

### **III. THE HEARING OFFICER IMPROPERLY FAILED TO FIND THAT PROCEDURE DE-002 IS MANDATORY (Issue IV)**

The DMV has implemented a system in which points are charged for violations and has developed a required procedure for the application and administration of any sanctions against dealers. This is to insure that the system is uniform and fair. (Petitioner Ex. 5, R. 441) Zenda Leaks, Assistant Manager of the DLAU, agreed that DMV Procedure DE-002 is the mandatory official procedure regarding the issuance of dealer sanctions (R.89-90, Petitioner Ex. 5, R. 436) The first page of Petitioner's Exhibit 5 (R. 436) states that DMV managers are required to insure compliance by employees and employees are required to read and follow these procedures. The DMV is not at liberty to alter Procedure DE-002 to remove the requirement that a failure to deliver title within 45 days be "willful" in assessing a 4-point violation. Therefore, this Court should reverse the finding of the Hearing Officer and rescind the license suspension.

**IV. THE HEARING OFFICER IMPROPERLY FAILED TO INCLUDE PROCEDURE DE-002 IN THE CONCLUSIONS OF LAW (Issues I, III, IV)**

DMV Procedure DE-002 is required to be followed by all employees of the DMV:

**REQUIRED ACTION:**

- Managers are required to have employees read this procedure and complete the electronic Policy/Procedure Acknowledgement on the Intranet if it applies to the employee's job duties.
- Employees are responsible for reading, electronically acknowledging and following this procedure if it applies to your job duties.

(Petitioner Ex. 5, p. 1-R. 436) The Order erroneously omits Procedure DE-002 from the Conclusions of Law despite the fact that the Order makes the following findings of fact:

... the assessments of 4 point violations were made pursuant to a finding by Petitioner of a "willful failure to deliver title to buyer or department within 45 days of date of sale."

(Order, R. 220) and a finding that:

Petitioner is required to show that the failures to deliver title were "willful" as defined in its Procedure DE-002.

(Order, R. 220) This they have failed to do.

**V. THE HEARING OFFICER WAS CLEARLY ERRONEOUS IN VIEW OF THE EVIDENCE ON THE WHOLE RECORD BECAUSE THERE WAS NO SHOWING OF A WILLFUL FAILURE TO DELIVER TITLE WITHIN 45 DAYS (Issues I, II, III, IV, V, VII, VIII, XIV, XVII)**

**A. The Hearing Officer Ignored the Requirement that the Violation be Willful**

The DLAU's sanctions against Toyota of Greer were arbitrary and capricious. The DLAU's own documents show that it consistently considered the violations committed by Toyota of Greer to be that of failure to deliver title within 45 days, but chose to ignore the requirement that any failure be "willful." Section III.D.4 of DMV Procedure DE-002 requires the DLAU to adhere to documented business process as to ensure uniform and fair assessment of

sanctions. Section III. D.2.states that points are assessed utilizing DMV Form DE-002B. (Petitioner Ex. 5, R. 441) The Dealer Performance Violation Sanction Table DE-002B separately lists violations for “Engaging in any action which causes damage to any party or to the public” (requiring a sanction of 6 points to revocation) and “Willful failure to deliver title to buyer or department within 45 days of date of sale” (requiring a sanction of 4 points). (Petitioner Ex. 5, R. 449) There is no discretion allowed: it is either a 6-point (or higher) sanction or a 4-point sanction.

**B. There was no Showing of Willful Failure to Deliver Title under Procedure DE-002**

The Order improperly fails to find that a violation cannot be assessed against Toyota of Greer because there was no “willful failure” under Procedure DE-002.

The DLAU admitted its policy states:

“the failure to deliver title violation” is not considered “willful” if the dealer can provide a written statement, substantiated by a Dealer Licensing and Audit Unit agent identifying a prior seller or lien holder who has failed to deliver the title as required by law.

(Transcript, R. 67-68, Petitioner Ex. 5, R. 441)

The DLAU’s witness, Zenda Leaks, also admitted that the failure to provide title within 45 days had to be “willful” in order for a 4-point sanction to be assessed against the dealer. (R.89-90) The DMV has determined in its own procedure that there is no “willful” violation if a prior seller or lien holder has failed to deliver the title. (R.441) In all three cases, the prior seller or lien holder failed to deliver title to Toyota of Greer within 45 days. The only exception to this section is when a Dealer sells a car “out of trust,” which is not alleged in any of the complaints against Toyota of Greer. Procedure DE-002 does not give the DLAU the option to consider the

violation "willful" if it decides the Dealer should have done more to get the title from the prior seller or lienholder and the Hearing Officer erred in making such a conclusion of law.

The written statements of Toyota of Greer employees that the actions of third parties prevented the timely transfer of the three titles, substantiated by DLAU Agent Benjamin, prevents the finding of a sanctionable offense under the DMV's Procedure. Therefore, none of the 12 points in the Official Notice should have been assessed against Toyota of Greer. The DMV's decision to sanction Toyota of Greer and the Hearing Officer's Order upholding the suspension was clearly erroneous in view of the evidence in the whole record and should be reversed.

**C. The Hearing Officer Improperly Labeled the Alleged Violations**

The Hearing Officer stated that the violation of "Engaging in any action which causes damage to any party or to the public" allows for sanction points "up to 6." (R.227) This finding suggests that the "failure to deliver title" can be considered a lesser included violation when it is clearly a separate violation. The Chart makes it clear. (Petitioner Ex. 5, R. 449) The willful failure refers to S.C. Code §56-15-40(1) which requires a finding that the dealer engaged in an action "which is arbitrary, in bad faith, or unconscionable." There has been no evidence that Toyota of Greer committed any of these.

The Hearing Officer also erroneously found that DE-002 "contains no provision that asserts the Department is limited to any particular category." (R. 227) There would be no reason for Procedure DE-002 to have a required 4-point sanction for "willful failure to deliver title" and a separate sanction beginning at 6 points for "action which causes damage to any party or the public" if the failure to deliver title was meant as a lesser offense. (R. 449) If that was the case, the "damage to any party or the public" violation would begin at 4 points. The DMV's Official

Notice indicated it was limiting itself to a single 4-point violation for each complaint. (R528-530) Because the violation "Engaging in any action which causes damage to any party or to the public" does not carry 4 points, it cannot be the violation with which Toyota of Greer was charged.

The DMV's own Sanction Reports further support a finding that it assessed a violation against Toyota of Greer only for the 4-point violation of failure to deliver title within 45 days. Section III.C.3. of DMV Procedure DE-002 required that a Sanctions Report be completed if the administrative investigation reveals violations. (R.441) The DMV submitted two Sanction Reports which list the violation as "Failure to deliver title within 45 days of date of sale." (Petitioner Exs. 6 and 8, R. 451, 469) Four points were assessed as the sanction on both reports.<sup>4</sup>

**D. Even the Erroneous Category Requires Willfulness**

The Order improperly applied the category of "Engaging in an action which causes damage to any party or to the public." Even if this violation is considered, it also requires a finding of willfulness, which has not been proven. DE-002 B references to S. C. Code §56-15-40(1) in this category which requires a finding that the dealer engaged in an action which was "arbitrary, in bad faith, and unconscionable." (R.449) The evidence was clear that it was the acts of others, not Toyota of Greer, that caused the delay in delivering the titles. Therefore, this Court should reverse the finding of the Hearing Officer and rescind the license suspension.

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<sup>4</sup> The DMV did not present evidence of a Sanction Report related to Tonya McCallister's complaint.

**VI. THE HEARING OFFICER ERRED IN FINDING A VIOLATION OF THE DEALER'S ACT (Issues II, VII, VIII, XVII)**

It was error for the Hearing Officer to find that the DMV charged Toyota of Greer with any violation other than willful failure to provide title within 45 days, which it could not prove under its own Procedure.

The DMV also failed to meet its burden of proof to show a violation of the South Carolina Dealer's Act and it was error for the Hearing Officer to find that it did.

S.C. Code Ann. § 56-15-40 states, in part:

(1) It shall be deemed a violation of paragraph (a) of § 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action **which is arbitrary, in bad faith, or unconscionable** and which causes damage to any of the parties or to the public. . . . (emphasis added)

Proof of a violation of the Dealer's Act requires the DMV to show that Toyota of Greer's actions were arbitrary, in bad faith, or unconscionable. "Arbitrary" for purposes of the Dealers Act is defined as "acts which are unreasonable, capricious or nonrational; not done according to reason or judgment; depending on will alone." *Taylor v. Nix*, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (1992).

"Bad faith" has been defined as:

The opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another, or a neglect or refusal to [fulfill] some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.

*State v. Griffin*, 100 S.C. 331, 333, 84 S.E. 876, 877 (1915).

Unconscionability is the absence of meaningful choice on the part of one party due to one-sided contract provisions together with terms that are so oppressive that no reasonable

person would make them and no fair and honest person would accept them. *Hardee v. Hardee*, 355 S.C. 382, 585 S.E.2d 501 (2003).

There has been no evidence presented to show that Toyota of Greer acted in an arbitrary or unconscionable manner, or in bad faith. Toyota of Greer presented evidence of the thousands of vehicles that it sells each year to show that in their normal experience, they can obtain titles within the 45-day period. (R. 176-177)

In the Gilliam matter, Toyota of Greer had confirmation from Ford Motor Credit that the loan on the Ford Explorer had been paid in full. (R. 137) There was no initial indication that there would be an extended delay in getting the lien released by Ford. Selling the car cannot be considered arbitrary or in bad faith, or unconscionable when the lienholder has confirmed that the lien has been satisfied.

In the Quality Auto matter, Ms. Powell was able to immediately receive the payoff amount and send a check to satisfy the existing lien. (R.144) It was Toyota of Greer's experience that the title loan companies would send the title within a few weeks, well within the 45 days. (R. 156) The closure of that particular branch of Carolina Title loans, without notice, was unexpected and not within Ms. Powell's normal experience of dealing with such entities. (R.156) Again, the subsequent sale cannot be considered as arbitrary, in bad faith, or unconscionable.

In the McAllister matter, Mr. Gorman informed the dealership that he did not have a lien on his car and that he would provide Toyota of Greer with the title. (R. 161) Mr. Gorman's vehicle was titled in North Carolina; however, his paperwork reflected that he was a South Carolina resident. When a search of the South Carolina CVR system showed a different owner for the car (the last South Carolina owner) it did not indicate that the title would not be obtained

in a timely manner. Ms. Taylor testified that it is not uncommon for a customer to trade in a vehicle that is registered in the name of other family members. (R.161-162) When that happens, Ms. Taylor testified that she involves any other family members needed to complete the transfer. (R. 161-162) Again, Ms. Taylor testified that in her experience, this process is accomplished within 45 days. (R. 175)

In this case Mr. Gorman's previous lender (who had been fully paid) had not marked his lien as satisfied and he was having difficulty getting his title. (R. 163) Mr. Gorman had not notified Toyota of Greer of this fact or of the fact that his car was registered in North Carolina even though he had a South Carolina address. This was an unusual series of events. As soon as Ms. Taylor was able to gather all the relevant facts from Mr. Gorman, she was able to quickly obtain the title.

It was the actions of third parties that prevented their timely receipt and forwarding of the titles. This is the exact reason the DMV policy does not penalize a dealer for the inactions of others out of their control. Dealers are not required to deal with their customers guided solely by fixed rules and standards. Their conduct under the Dealer's Act need only have some reasonable basis. *Taylor v. Nix*, 307 S.C. 551, 416 S.E.2d 619 (1992).

It was clearly erroneous for the Hearing Officer to find that Toyota of Greer violated the Dealers Act and this Court should reverse his finding and rescind the license suspension.

**VII. THE HEARING OFFICER MADE SEVERAL MISSTATEMENTS IN HIS CONCLUSIONS OF LAW # 14 (Issues II, IX, X, XI)**

**A. The Hearing Officer Improperly Found that Toyota of Greer Provided False or Misleading Bills of Sale or Affidavits & Notifications of Sale**

Toyota of Greer did not provide a false or misleading Bill of Sale or Affidavit & Notification of Sale and it was erroneous for the Hearing Officer to make this finding in his Conclusions of Law # 14.

As set forth above, the Bill of Sale that was issued to Quality Auto, and signed by someone other than Toyota of Greer, (probably an employee of the Auction) asked for the disclosure of liens in the **buyer's name**, which there were none since Quality Auto did not finance the purchase. (R. 465)

Toyota of Greer did not make false statements when it sold any of the cars. All outstanding encumbrances on the vehicles had been satisfied either by Toyota of Greer or by the previous owner. Toyota of Greer confirmed prior to the sales to Ms. Gilliam and Quality Auto that all liens had been satisfied. In Ms. Gilliam's complaint, the only evidence in the record is that Ford Motor Credit acknowledged that the lien was paid off and it was Ford Motor Credit that delayed in sending the title. Also, the previous owner of the Mazda sold to Ms. McAllister certified to Toyota of Greer that there was no outstanding lien on the car. As the record shows, the lien had been previously satisfied and all that was needed was for the lender to reflect it on the record. (R. 163)

**B. The Hearing Officer Improperly Found that Toyota of Greer Argued Willfulness was Not Shown Merely Because of the Large Volume of Sales**

Toyota of Greer does not claim, as stated in the Order, that the DMV could not prove willfulness "due to the volume of business it handled, occasional problems were inevitable and could happen to anyone." (R.226-227) Rather, Toyota of Greer argued that its large volume of

sales compared to any problems with delivering title demonstrated that it had the proper business procedures in place for timely delivery of titles. Only a miniscule number of the deals over a three year period had a problem. (R. 187)

The DMV cannot prove willfulness because its own Procedure DE-002 required that “willful failure” to deliver title to buyer within 45 days and that “the failure to deliver title violation” is not considered willful” if the dealer can provide a written statement, substantiated by an Agent of the DMV identifying a prior seller or lien holder who failed to deliver the title. The Hearing Officer made these findings of fact on page 6 of the Final Order and Decision (R. 220). The Hearing Officer failed to note that DLAU Agent Benjamin testified that he did not investigate the statements that he received from Toyota of Greer but considered them to be true, thereby “substantiating” them. (R. 123-124)

**C. Carolina Title Loans Closed its Branch Office After Toyota of Greer Established Initial Contact**

The Hearing Officer misstated the testimony of Toyota of Greer’s Toni Powell regarding the sale to Quality Auto. Ms. Powell did know the branch where the title was held. She testified that she contacted the Greer branch and received the payoff information. (R. 144) She further testified that she sent the payoff check to the same branch and the check was cashed by Carolina Title Loan. (R. 144) It was not until after the Chrysler 300 was sold to Quality Auto (for \$300) that it became known that the branch which had originally held the title had closed. (R. 145-146)

**VIII. THE HEARING OFFICER MADE THE FOLLOWING FACTUAL MISREPRESENTATIONS: (Issues IX, XI, XII, XIII, XV, XVII)**

**A. As to Quality Auto of Anderson’s Complaint**

The Hearing Officer improperly found that the Bill of Sale was prepared and signed by a representative of the Toyota of Greer. R. 216) Toni Powell testified that Toyota of Greer does

not use a form like the one on page 7 of Petitioner's Exhibit 7. (R. 148) Ms. Powell further testified that the signature on the Bill of Sale did not belong to any employee of Toyota of Greer. (R.148) It obviously was signed by the Auction.

The Bill of Sale stated that the vehicle was "free of all liens and encumbrances in the buyer's name . . ." (R. 465) There was no evidence in the record that there was a lien or encumbrance in Quality Auto's name at the time that it bought the Chrysler 300. If Quality Auto had financed the purchase of the Chrysler 300, the lender would have been listed in the space provided.

The Hearing Officer noted that the lien with Carolina Title Loans was paid off by Toyota of Greer on February 25, 2016, prior to the sale of the vehicle at auction. (R. 217) The Hearing Officer failed to note, however, that Toyota of Greer's Ms. Powell testified that she did not know that the branch of Carolina Title Loans that held the title had closed at the time that the vehicle was sold at auction. (R. 145-146) In fact, the evidence suggests that the branch was not closed at that time since the payoff check that was sent to that branch was received and deposited by Carolina Title Loans. (Transcript, R. 144, Respondent Ex. 8, R. 321)

#### **B. As to Tony McAllister's Complaint**

Michelle Taylor testified for Toyota of Greer that Matthew Gorman informed the dealership that he had to apply for a duplicate title for the Mazda to replace the one he lost. (R. 161) Mr. Gorman would not have the title in his possession if there was a lien on it. Ms. Taylor further testified that because the vehicle was registered in North Carolina, a South Carolina title inquiry did not show Mr. Gorman's information. (R. 163) There was no evidence in the record that Toyota of Greer was aware on February 10, 2017 (when it completed the Affidavit & Notification of Sale of Motor Vehicle) that there was a lien on the vehicle other than the lien

**THE STATE OF SOUTH CAROLINA  
In the Administrative Law Court**

**APPEAL FROM THE DEPARTMENT OF MOTOR VEHICLES  
Docket No. 18-ALJ-21-0011-AP**

Toyota of Greer ..... Appellant,

v.

South Carolina Department of Motor Vehicles ..... Respondent.

**PROOF OF SERVICE**

I, Peggy McComb, Legal Assistant at Bradford Neal Martin & Associates, PA, hereby certify that due and proper service of the document(s) affixed hereto and described below was made by depositing a true copy(ies) of same in the United States Mail at Greenville, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon.

**DOCUMENTS:** Appellant's Brief

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**FILED**

**MAR 29 2018**

**SC ADMIN. LAW COURT**

Date: March 29, 2018

Peggy McComb  
Peggy McComb

THE STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT  
ALJ DOCKET NO: 18-ALJ-21-0011-AP

APPEAL FROM SOUTH CAROLINA  
OFFICE OF MOTOR VEHICLES HEARINGS  
OMVH DOCKET NO: 17-OMVH-05-3345-CC

PHILIP T. ADDINGTON, OMVH HEARING OFFICER

TOYOTA OF GREER ..... APPELLANT

VS.

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES ..... RESPONDENT

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BRIEF OF RESPONDENT  
SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES

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## STATEMENT OF THE ISSUES ON APPEAL

1. WHETHER SUBSTANTIAL EVIDENCE IN THE RECORD AS A WHOLE SUPPORTS THE HEARING OFFICER'S ORDER SUSTAINING THE ONE WEEK SUSPENSION FOR FAILING TO TIMELY DELIVER TITLES FOR THREE VEHICLES, THEREBY DAMAGING ITS CUSTOMERS?
2. WHETHER APPELLANT HAS PRESERVED THE ISSUES IT ALLEGES AS ERROR?
3. WHETHER APPELLANT'S HEARSAY OBJECTION DOES NOT INVOLVE OBJECTIONABLE HEARSAY?
4. WHETHER APPELLANT'S ISSUES OTHERWISE LACK MERIT?
5. WHETHER ADDITIONAL SUSTAINING GROUNDS LIKEWISE SUPPORT THE HEARING OFFICER'S DETERMINATION?

## STATEMENT OF THE CASE

This matter commenced when the South Carolina Department of Motor Vehicles ("SCDMV" or "Department") issued Appellant Toyota of Greer an Official Notice of License Suspension on June 27, 2017, listing specific complaint numbers and citing Code Sections alleged to have been violated by the Respondent. The Notice asserted that the Respondent had committed violations justifying suspension for a period of one week by the accumulation of sanction points. As set forth in Sanction Procedure DE-002 (R. 436):

The matter came before the South Carolina Office of Motor Vehicle Hearings ("OMVH") upon timely request by Appellant for a contested case hearing. A hearing was

scheduled to be held before Hearing Officer Phil Addington on October 2, 2017 at the Greer Municipal Court at 100 S. Main Street, Greer, South Carolina.

On December 12, 2017, Hearing Officer Addington issued a Final Order and Decision sustaining the suspension. Toyota of Greer filed a Motion to Reconsider together with a Motion to Stay with the OMVH on December 12, 2017 but failed to serve the Respondent Department. The Department was not served by any means until the receipt of a January 5, 2018 email and the Motions were received by mail on January 11, 2018 (R. 289, 255-261). On January 11, 2018, Toyota of Greer filed a Notice of Appeal to this Court, and Hearing Officer Addington filed an Order dismissing the Motion for Reconsideration due to want of jurisdiction.

#### **STANDARD OF REVIEW**

The scope of judicial review in cases such as this is limited by the Administrative Procedures Act, S.C. Code Section 1-23-380(A)(5) (Supp. 2017).

(A) A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review....

(5) The court shall not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981), our Supreme Court set out the standard of evidentiary review under the South Carolina Administrative Procedure Act:

[then Section 1-23-380(g)(5)] specifically states: "The Court shall not substitute its judgment for that of the agency as to the weight of evidence on questions of fact." In addition, the statute states the decision under appeal must be "clearly erroneous" in view of the substantial evidence on the whole record.

We, therefore, caution the Bench and Bar as to the limitations upon the application of the "substantial evidence" rules in reviewing the decision of administrative agencies. As stated in *Dickinson-Tidewater, Inc. v. Supervisor of Assess.*, 273 Md. 245, 329 A.2d 18, 25, the substantial evidence test "need not and must not be either judicial fact-finding or substitution of judicial judgment for agency judgment"; and a judgment upon which reasonable men might differ will not be set aside.

The Court further noted that:

The substantial evidence rule... means that we will not overturn a finding of fact by an administrative agency "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." (Citation omitted.)

See also, *Schudel v. South Carolina Alcoholic Beverage Control Commission*, 276 S.C. 138, 276 S.E.2d 308 (1981); *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 281 S.E.2d 18 (1981).

An action of an administrative agency must be sustained if supported by substantial evidence. *Hamm v. American Telephone & Telegraph Co.*, 302 S.C. 211, 394 S.E.2d 842 (1990); *Lark v. Bi Lo, Inc.*, *supra*. In *Lark*, our Supreme Court quoted *Consolo v. Federal Maritime Commission*, 383 U.S. 611, 16 L.Ed.2d 131, 86 S. Ct. 1118 (1966), to define substantial evidence:

We have defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."... "It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury..." This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

*Lark*, 276 S.C. at 136, 276 S.E.2d at 311. *See, also, Dorman v. DHEC*, 565 S.E.2d 119, 350 S.C. 159 (Ct. App. 2002); *Hamm v. South Carolina Public Service Commission and Wild Dunes Utilities, Inc.*, 311 S.C. 295, 422 S.E.2d 118 (1992).

A court cannot weigh the evidence and substitute its judgment for that of the agency upon a question as to which there is room for a difference of intelligent opinion. *Dorman v. DHEC*, *supra*; *Hamm v. American Telephone & Telegraph Co.*, *supra*; *Chemical Leaman Tank Lines v. South Carolina Public Service Commission*, 258 S.C. 518, 189 S.E.2d 296 (1972). The limited substantial evidence standard of review is intended only to assure that the agency's action is properly supported and that, therefore, no abuse of delegated authority occurred. *See, Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973).

On review of the acts or orders of administrative agencies, the courts will presume, among other things, that the agency action is regular and correct, and that the orders and decisions of the agency are valid and reasonable. *Kearse v. State Health and Human Serv. Fin. Comm'n.*, 318 S.C. 198, 456 S. E. 2d 892 (1995); *S. C. Dept. of Motor Vehicles v. Nelson*, 364 S.C. 514, 613 S. E. 2d 544 (Ct. App. 2005); 73A C.J.S. *Public Administrative Law and Procedure* Section 220(a) (1983). Therefore, the burden is on the Appellant to show convincingly that the order of the agency is without evidentiary support or is arbitrary or capricious as a matter of law. *Hamm v. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 (1988).

## SUMMARY OF ARGUMENT

**1. SUBSTANTIAL EVIDENCE IN THE RECORD AS A WHOLE SUPPORTS THE HEARING OFFICER'S ORDER SUSTAINING THE ONE WEEK SUSPENSION FOR FAILING TO TIMELY DELIVER TITLES FOR THREE VEHICLES, THEREBY DAMAGING ITS CUSTOMERS.**

Appellant has created number of overly complicated legal theories. It has attempted to show the Department must have meant what it did not allege and also that if the Department assesses less sanction points than it's the Department's Sanction Procedure DE-002 allows for that should not be regarded as a forbearance but must be regarded as conduct that cannot be sanctioned at all. In fact, this matter is really very simple. The simple truth is that Appellant in three sales of vehicles failed to perform its most fundamental duty to its customers. It failed to get the customers a title and registration.

It failed a legal duty to those customers imposed by *S.C. Code Ann.* §§ 56-19-210, -240, -360 and -370. It admittedly sold vehicles for which it did not have a title in hand. Appellant asserts that it did everything it could do but apparently this conception of "everything" includes depriving its customers of their registrations and titles not for a day, not for a week, nor even a month, but for periods of time at or exceeding double the statutory period allowed for titling vehicles sold by dealers.<sup>1</sup> During the periods when the registration was delayed beyond the forty-five day period, the customers had no legal means of driving those vehicles, nor could the vehicles be sold to other parties because,

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<sup>1</sup> The statutory sections referred to in the text above require immediate transfer of title for ordinary sales such as transfers between individuals. For licensed dealers, there is a recognition that sellers may need to apply for duplicate titles or releases prior liens must be processed. Therefore, Section 56-19-370 limits this grace period to forty-five days. Consequently, the temporary license plates dealers give customers to allow the customers to legally drive during the grace period may not extend beyond forty-five days pursuant to *S.C. Code Ann.* § 56-3-210 (C).

whether the customers were dealers or private citizens, they likewise had a duty to assign title which they did not have.

In each of these cases Appellant assured it was doing "everything it could do" to acquire titles for its customers. In each of the cases, however, Appellant depended on the purported promises or obligations of third parties. In each of those cases the vehicles were unregistered and not legally drivable or sellable for an additional period of at least forty-five days. For each of these customers there is no evidence in the record that the Appellant offered to any of the customers a buy back, a loaner or rental car, a discount or anything else to mitigate the lack of title and registration.<sup>2</sup> In the case of Mr. Bocook, he stated he could not even reach the dealership's personnel on the phone to answer his inquiries (R. 23, l. 14 through 24, l.21). In that sale, Appellant suggests that its customer bought a "piece of junk" from its dealership and suggested that if Mr. Bocook had merely adhered to the rules of the auction he could have returned the vehicle by notice within forty-eight hours (R. 17, ll. 15 through 20), as if the auction's policies somehow relieve the Appellant of its duty to provide its customers title.

In at least one instance, the Department sent Appellant a warning letter that its failure to deliver titles as required by the statute could lead to sanctions before, including one of the complaints involved with this matter (R. 431) . The Department had Dealer Licensing and Audit personnel visit the Appellant in Greer for a meeting specifically about

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<sup>2</sup> Appellant's counsel in argument suggested that the dealership offered to buy back the vehicle from Mr. Bocook (R. 17, ll. 13-15). No testimony or actual evidence of this offer is otherwise found in the record and is of course directly contradicted by Mr. Bocook's own testimony in which he stated that he never received any communication from Toyota of Greer (R. 24, ll13, 14) and ultimately had to sell the vehicle at a loss (R. 26, ll. 18-21).

the problem of failure to deliver titles (R. 62, l. 13 through 63, l. 8) so that Appellant could avoid being sanctioned.

Appellant made strenuous efforts to characterize the Department's allegations being "willful failure to title" even though the Department did not allege that. Appellant further insisted because the failure to title was arguably due in some part to someone else's conduct, terminology in the Department's internal sanction procedure regarding "willful failure to title" prevented the Department from imposing sanctions at all. In fact nothing in the Department's actual allegations refer to willfulness. The actual allegation in each case was "[e]ngaging in an action which causes damage to any party or to the public (Failure to deliver title within 45 days of the date of sale.)" (R. 528, -29).

The failure of a dealership to provide title to vehicles it sells is undeniably an illegal act. The Hearing Officer was aware that a warning letter had been issued to the Appellant using the same terminology prior to the one causing the Appellant to reach twelve points (R. 431), where DE-002 called for Sanctions to be assessed at each twelve point accumulation threshold. The Hearing Officer was also aware that the Appellant had been sent a number of other warning letters dating back to the year 2012, warning the Appellant that the continued failure to deliver title within the statutory period would put the Appellant in jeopardy of being sanctioned.

The Hearing Officer, however, ruled that he would disregard the warning letters on the basis of the Appellant's argument that if the warning letters or the letters' subject matter were not disclosed in the Official Notice of Dealer License Suspension, the letters could not be addressed (R. 44, ll. 21-23; 49, ll.13-20). This unfortunately was in error. *S.C. Code Ann.* § 1-23-320 (b) states:

(B) The notice must include a:

- (1) statement of the time, place, and nature of the hearing;
- (2) statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) reference to the particular sections of the statutes and rules involved;
- (4) short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

Under OMVH Rules, the OMVH Hearing Officer schedules the time and place for the hearing. All other requirements were met in the Notice. In addition, *S.C. Code Ann.* § 1-23-370 (c) adds:

No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee or the facts and conduct which warrant the action, and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license.

The Official Notice of Dealer License Suspension stated the specific violations on which the suspension was to be based. The Department never contended that the older violations for which warning letters were generated were relied on to support the currently contested suspension. In those cases the points listed in those letters would have dropped off over time as provided in DE-002 (R. 442). In fact, Appellant vigorously argued that it should be given the benefit of the Procedure's provisions for dropping points off over time. In fact, Appellant had already been given a notice of the suspension and the passage of a calendar year did not occur until after the matter was awaiting hearing (R. 66, II. 20-425; 81, 1.22 through 82, 1.2; 528).

But there is nothing in the South Carolina Administrative Procedures Act indicating that otherwise admissible evidence regarding the party's state of mind or whether the party had previously been warned that similar violations might result in sanction should not be admitted because the evidence was not specifically detailed in the Notice. There is no basis for this in the South Carolina Administrative Procedures Act or the case law construing it. And of course, Appellant did have notice of the warning letters anyway because it received them.

Moreover, the Hearing Officer was authorized to consider the circumstances of the particular violations noticed. Department witness Zenda Leaks testified that the Department did not necessarily seek to assess points if a dealership was a few days past the forty-five day limit (R. 85, ll. 6-12). But these failures to deliver titles were not delayed by a week or two beyond the forty-five day limit. Each of the complaints listed in the involved delayed titling more than twice the statutory maximum. In short, the length of time beyond the statutory limit matters.

Two of the delays in titling exceeded twice the statutory maximum by a few days. In the case of Ms. Gilliam, the delay was 99 days (R. 474, 495, -96). For Ms. McCallister it was 94 days after the sale. (R. 497, 512, -13). The initial response of title clerk Michelle Taylor makes clear that the prior owner of Ms. McCallister's Mazda was not the person who presented the vehicle to the dealership for sale and the actual owner was not even contacted until mid-April of 2017, more than two months after the sale to Ms. McCallister. For Quality Used Cars and Mr. Bocoock, the wait was 143 days, more than *three times* the maximum time allowed by law (R. 455).

The Hearing Officer was entitled to and did consider a Bill of Sale and Affidavits and Notifications of Sale that contained misleading statements regarding existing liens (R. 216-220, 226). Regarding the Chrysler sold to Mr. Bocook, Appellant emphasizes the word "buyer's" and claims that the *auction* sold him the car "on consignment" (R. 17, l. 3) or that the Bill of Sale was not signed by Appellant's personnel (R. 148, ll. 9-22). The Appellant acts as if the vehicle mysteriously vanished from Appellant's lot and suddenly reappeared at auction without Appellant's volition.

The auction was not the seller. *Williams v. Toyota of Jefferson, Inc.* 655 F. Supp. 1081 (E.D. La. 1987) (an auction merely a means of sale and the auction is not a transferor subject to Odometer Act liability); *Indus. Indemnity v. Arena Auto Auction*, 638 F Supp. 1030 (D. Minn. 1986) (auction selling vehicle to a dealer on behalf of another dealer had no ownership interest and was not a transferor). The auction was Appellant's agent on the sales document and as a merchant Appellant still had a duty to warrant title under *S.C. Code Ann.* § 36-2-312. Regardless of phraseology, the document clearly called for disclosure of known liens. Otherwise it does not make sense.

Appellant appears to take the position that if the check is in the mail promptly there is really no lien, whereas the whole point is that liens are liens until they are no longer liens of record. It is fine to count on the fact that a check is being sent or a selling customer assures that there is no lien or a duplicate title will be acquired. That does not always work out, however, and the question becomes "what happens then?"<sup>3</sup>

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<sup>3</sup> Appellant alleges that there was nothing misleading about any of the sales documents. What if the Affidavit and Notification of Sale for Ms. Gilliam had said: "The dealership has had this 2007 Explorer on its lot since January 25, 2016 and cannot get a title because there is a lien of record and we are in contact with Ford Motor Credit who tells us that they have to hunt through old records." Which disclosure would have been less misleading? Suppose further Ms. McCallister's Affidavit and Notification of Sale had contained a statement "Toyota of Greer cannot determine whether there is another lien or encumbrance on the Masda because it is not clear whether the customer that sold it to us owns the vehicle or what State it is

Even though the Hearing Officer was asked to believe Appellant did to acquire the titles, the Department points out each title was ultimately acquired within shortly after the customer field a complaint. Mr. Bocook's complaint was and received by Dealer Licensing and Audit July 14, 2016 (R. 457). Title was delivered on July 18, 2016 (R. 455, 457). Ms. Gilliam's complaint was received by Dealer Licensing and Audit on June 28, 2016 (R. 476). She got her tags July 6, 2016 (R. 474, 475). Ms. McCallister's complaint was dated April 26, 2017 (R. 498). The vehicle was titled to Ms. McCallister on May 15, 2017 after momentary additional delay owing to a tax stop (R.497, 502).

In addition, even if it were accepted that third parties played a part in the delays, in each complaint Appellant chose to market the vehicles *before* it received unencumbered titles. Like Ms. Leaks, the Hearing Officer was free to assess the long term violation as more culpable than technical, but momentary, violations. He was certainly free to consider that the failure to deliver which more than doubled the legal limit in two cases or in one case more than tripled the legal time limit was more culpable and evidenced Appellant's willingness to let its customers suffer the consequences for its failures.

Appellant's Counsel made the suggestion that in one case the Appellant had offered to buy the vehicle back (R. 17, 13-15). Thus, the Hearing Officer was authorized to make an inference when evidence of the offer to buy back or otherwise mitigate its customers' situations was not actually presented. Whoever might have made an offer to buy back a customer's vehicle or offer to provide rental or other mitigation was clearly in the control of the Appellant, and Appellant would have been expected to provide this testimony.

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titled in and we do not know if there is a lien." Would that knowledge have been material to her decision to purchase the vehicle?

Clearly Counsel deemed the issue to be material because the issue was mentioned in argument. The Hearing Officer was allowed to draw an inference that testimony of the Appellant's officers or employees if given would not have supported its position in the case. *Robinson v. Duke Power Company*, 213 S.C. 185, 48 S.E. 2d 808 (1948).

The Hearing Officer was allowed to consider and give weight to Clerk Tina Powell's admission that the combined dealership (each of which she worked for) had had a lot of turnover and movement within finance departments due to employee terminations and that the terminations were the result of bad deals (R. 455). Bad deals can also cause difficulty in acquiring titles. Please see discussion of Appellant's objections below.

The Hearing Officer was also entitled to give Ms. Powell's admission greater weight than the alleged foolishness of Mr. Bocook to buy the Appellant's piece of junk and then have the temerity to want the title. The Hearing Officer was entitled to give it greater weight than the alleged impossibility to locate an alternative branch or manager of a statewide corporation to release a lien. He was entitled to give it greater weight than the allegation that there was no way to get a release of lien from a nationwide company.

In addition, Appellant presented evidence that four separate franchise dealerships run all their titles through Ms. Powell and Ms. Taylor (R. 184, l. 2 through 185, l. 3). The ostensible reason for this is to show the large overall volume of sales result in a low number of complaints. Appellant's Brief 22. It is also susceptible to the inference that the complaints could be even fewer and less severe if the dealerships did not depend on the two ladies to do all title work, and as their testimony suggests, all or nearly all troubleshooting of title problems.

Arbitrary conduct of a motor vehicle dealer, prohibited under the Dealers Act, is

readily definable and includes acts which are unreasonable, capricious or nonrational, not done according to reason or judgment, depending on will alone. *Brown v. Dick Smith Nissan, Inc.*, 414 S.C. 101, 105-06, 777 S.E.2d 208, 210-11 (2015).

Evidence of record shows that all three complaints involved illegal failures to deliver title. The evidence shows that the Appellant had not secured titles before selling. Evidence shows that the length the failure to deliver exceeding double the legal maximum limit in each case, and triple the legal maximum in one. Evidence shows there was at least one prior warning in writing that similar violations would lead to sanctions. Evidence shows that sales documents in the form of sworn affidavits stated there were no liens or encumbrances other than Appellant's purchasers financing liens when in truth there were other liens of record. In two cases there was some expectation that the liens would be satisfied based on near contemporaneous payment. In another, at the time of sale to the customer Appellant had no idea whether there were liens or not because it did not know who sold the car to Appellant. There is an absence of evidence of any effort to mitigate the customers' dilemmas of owing cars with no titles and thereby being unable to drive or sell the vehicles legally. All these factors combine to justify the Hearing Officer's finding that the Appellant's conduct as a whole was arbitrary.

2. **THE APPELLANT'S ASSIGNMENTS OF ERROR ARE NOT PRESERVED.**

It is axiomatic that an issue cannot be raised for the first time on appeal but must have been raised to and ruled on by the trial judge to be preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E. 2d 731, 733 (1998). If a losing party has raised an issue in the lower court, but the court fails to rule on it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.

*I'On L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). The Department acknowledges that Appellant attempted to file a motion to reconsider. This motion, however, was defective in that it failed to serve the Department and thereafter, before the Department's time to respond after actually having been served had elapsed, Appellant filed this appeal.

Appellant's Issues VI. (allegedly failing to find that DE-002 and implicitly Appellant's various interpretations of it are mandatory, V. (allegedly improperly finding that the Department charged the Appellant with engaging in action damaging any party or the public), VI. (alleging the Hearing Officer erred recognizing the category of violation that the Department alleged instead of the one insisted on by Appellant); XIV (alleging that the Hearing Officer failed to find that the Procedure required sanction reports, apparently suggesting that sanction is not permitted in the absence of one of the reports as opposed to the report being used simply for internal processing), all these arguments should be deemed abandoned. Other than in some vague way of restating other allegations of error in a slightly different way, Appellant has not put these specific issues before the Hearing Officer for correction of alleged errors nor was Appellant demonstrated why the issues are relevant to the case.

In addition, the Appellant objected to comments in Statement of Issues XVI that dealer comments of Agent Benjamin's report were inadmissible hearsay. In addition to the hearsay discussion below, this issue also is not preserved and is deemed abandoned on appeal. In the discussion regarding the submission of the Department's Exhibit 6, Appellant went through various documents identifying which ones were and were not objected to (R. 98). When it came to the investigative report of Agent Benjamin,

Appellant's position was "[t]he fifth document is investigation of complaint regarding dealer wholesaler, which is apparently something that the dealer comments that is Jason, so that's fine. That's something Jason did, but that is the fifth document only" (at ll. 12-16). Thus, there was no contemporaneous objection for the evidence that Appellant complains of now.

3. **APPELLANT'S HEARSAY OBJECTION DOES NOT INVOLVE OBJECTIONABLE HEARSAY.**

Another particular example is the allegations that the Hearing Officer wrongfully considered hearsay (R. 250). The statement was an admission from title clerk Powell that the dealership had a lot of turnover and movement within they finance departments due to employee terminations that were the result of bad deals. This admission clearly fits within the definitions of non-hearsay admissions by a party opponent. Under SCRE 801 (d) (2) (C) and (D). Such admissions are admissible if made by one who is authorized to make statements concerning the subject, or by an agent or servant concerning a matter within the scope of the agency or employment Ms. Powell clearly fit both descriptions precisely because the Appellant *called* her to testify concerning such matters within the scope of her employment as a title clerk.

In addition, the suggestion that somehow another person was involved is speculation and the Hearing Officer was authorized to reach the opposite conclusion.

There was no indication that Mr. Benjamin was speaking to or took statements from anyone other than Ms. Powell regarding this complaint (R. 455). Nor is there any indication in any of the other Dealer Wholesaler Sanction Reports that Mr. Benjamin took statements from anyone other than Ms. Taylor, the title clerk in the Gilliam complaint (R

474) and also Ms. Taylor in the McCallister complaint (R. 497) with the exception of Mr. Russell Antici identified by Mr. Benjamin (R. 99, ll. 19-22) and Appellant's own evidence (R. 330) as the Appellant's Corporate Comptroller and officer who is likewise qualified to address the subject. The Hearing Officer was clearly free to interpret the statement as Ms. Powell's own. If there is any question at all the admission is even more authoritative if stated by Mr. Antici.

Counter to Appellant's allegation, there was evidence that there is a regular practice of investigative activity to make such reports: namely the official form DLA-5A, issued in each of the complaints (R. 455, 474 and 497). These reports were forwarded to Ms. Leaks, the compiler and maintainer of the Dealer Licensing and Audit unit's official records. So it is unnecessary to consult the SCRE 803 (6) exception (even though it fully qualifies), because it is a public record of matters observed by an agency pursuant to a legal duty in SCRE 803 (8) *See, State v, Pearson*, 223 S.C. 377, 76 S.E. 2d 151 (1953).

#### 4. **APPELLANT'S ISSUES OTHERWISE LACK MERIT.**

##### **Appellant's Assignment of Error II.A. Alleged Procedural Errors: Appellant's Issues I, II, III, IV, VIII and XVII**

Appellant's assignment of error II. A. (apparently referring to Appellants Issues on Appeal I.) itself contains two fundamental errors. First, the Appellant argues that the Hearing Officer erred in failing to rescind when the Department's mandatory procedures required rescission. This translates to an argument that the Hearing Officer erred in refusing to accept the Appellant's characterization of the category of the alleged violation. Comments here are supplementary to the discussion on the subject in page 6. above.

It is undeniable that “engaging in any action which causes damage to any party or to the public” is a separately listed category of violation in the violations grid in DE-002 (R. 449). It is also clear from the record that the failure to provide title, the length of time title was not provided (making the vehicles legally useless to its customers), and other factors caused damage to Appellant’s customers. The Procedure’s violations grid’s reference to willful failure to title is clearly based on a criminal statute, *S.C. Code Ann.* § 16-21-20 (*see* R. 449). A sanction under that violation involving a willful failure to title would be based on a criminal standard of proof. In the typical case, it would not factor into the suspension or revocation of a dealer unless law enforcement actually undertook an enforcement action under that section resulting in a conviction that could lead to a sanction under Section 56-15-350 (e), for example.

Of course, it is not inconceivable that in a proper case the Department might believe it could meet the standard and added the violation to the grid as an additional tool to deal with dealer violations. That does not mean that a particular act cannot be regarded as potentially more than one violation listed on the grid, depending on the circumstances. Ms. Leaks testified to as much (R. 82, ll. 8-11; 85, ll. 11 through 86, l. 7; 92, ll.1-10). And Appellant is clearly not prejudiced by having the Department assign less sanction points than the grid calls for any more than Appellant was prejudiced by the Department forbearing an earlier suspension when Appellant had accumulated twelve sanction points when the Department relented based on the possible partial responsibility of a complainant for the failure to deliver title.

Appellant’s second error on this point is the nature of the Procedure DE-002 itself. And concerning it, Appellant seems to be of multiple minds. Appellant variously refers to

DE-002 as “the law” (R. 87, ll. 116-20; 188 l. 25 through 189, l. 3; 188, l. 25 through 189, l. 3), “regulations” (R. 93, ll. 21-23), “rules” (R. 71, l.17; 80, ll. 4-5; 113, ll 15-16) and “policy” (Appellant’s Brief, at 4). The quote of President Washington on Appellant’s Brief page 9 seems to suggest that D-002 has some constitutional dimension as well. Yet regarding the highly similar guideline of the Dealers Manual, which Appellant admittedly possessed (R. 332), which emphasized the legal requirement of titling sold vehicles within forty-five days (R. 263), Appellant breezily notes “this is just a manual, and not the law” (R. 43. l. 17-44, l. 1). Of course, nothing in DE-002 calls for the rescission of any sanction, contrary to Appellant’s insistence.

In fact, the only *laws* involved are *S.C. Code Ann.* §§ 56-19-210, -240, -360 and -370, making the failure to title within forty-five days a clear violation of law; *S.C. Code Ann.* §56-15-350, giving the Department discretion to sanction dealers for any violation listed in it; and *S.C. Code Ann.* §§56-15-30 and -40, declaring unfair methods of competition and unfair or deceptive acts or practices within the scope of the chapter unlawful.

DE-002 is not the law. It is not a regulation or a rule. It has never been submitted to the General Assembly for promulgation as a regulation. It is not even a policy, for which the Department makes specific distinctions between policies and procedures. It is an internal procedure, referenced within its text as guidelines (R. 436, 437. The Reference on 437 is noteworthy for 8/01/09 version: [“To set forth guidelines for the application and administration of sanctions for dealers who are not in compliance with the minimal statutory requirements or who have willfully committed violations of law (emphasis added)]. It is essentially a flow chart to be followed in the typical case. It is not even signed

by the Executive Director, Kevin Shwedo. It is signed by Karl McClary, the Inspector General, and the Director who oversees the Dealer Licensing and Audit Unit. Appellant, despite its repeated references to DE-002 as mandatory or law or rule, has offered no authority to suggest that an alleged failure to follow an internal procedure correctly, a procedure not approved by the General Assembly as a regulation, invalidates an agency action otherwise legal. The Department is aware of no such authority either.

The Department, through its Inspector General, is free to follow the procedure, amend it, or rescind it altogether. Inspector General McClary is also free to make exceptions to it in an appropriate case. If it were found that the Department had deviated from DE-002, it is clear that if any such deviation occurred it was in fact approved by Mr. McClary because Dealer Licensing and Audit sought his input as to the sanctioning of Appellant (R. 61, ll. 10-23). Whether or not any reply by Mr. McClary may be regarded as inadmissible hearsay, Ms. Leaks' consultation with him about the sanctioning of Appellant was properly admissible. If there is a violation of the "mandatory" nature of the procedure it is possible that an employee or employees of the Department might be disciplined, but that is unlikely since Mr. McClary approved the sanction. It is not Appellant's issue to assert.

Nor has Appellant shown that it has been prejudiced by DE-002 or any alleged deviation from it. The only evidence in the record of Appellant's knowledge of sanctionable violations is the Dealer Manual that Appellant admitted to having, which points out that titles must be provided within forty-five days, and the warning letters. Whether credence is given only to the letter relating to a complaint listed in the Official Notice (Letter of February 5, 2016, R. 432) or more properly the additional warning letters

going back to 2012 (R. 433-435), each warning letter used the same terminology as the Official Notice of License Suspension. So Appellant had no reasonable basis to assume it would or could be assessed for sanctions on a different standard. There is no evidence in the record that Appellant acquired DE-002 and studied it. There is no evidence that Appellant, having studied DE-002, and in reliance on some interpretation of it made a calculation that it could engage in this violation but not that one and thereby escape sanctions. There is no evidence in the record that Appellant ever laid eyes on DE-002 before it was preparing to the hearing.

Likewise, the error assignments X and XI clearly lack merit in addition to being likely unpreserved. Regarding the bill of sale for Quality Auto, the Hearing Officer accurately stated that the vehicle was sold through the auction and signed by a representative of Appellant. He did not say employee (R. 216). He fully acknowledged Ms. Powell had made the claim the signature was not "authorized." (R.217) but the fact remains that the auction was the Appellant's agent in the sale and Appellant was the seller, and it does not diminish Appellant's duty as a merchant to provide title and disclose lien status through the agent. Error assignment X claims error on the basis that the Hearing Officer somehow based his decision on the assumption Appellant thought the Department could not prove willfulness because of the volume of business. It does not quite makes sense but if Appellant somehow wanted to avoid a misperception about volume of business of itself an affiliates unrelated to this matter, perhaps it should not have given as much emphasis to it (R. 66, ll.14-19, 86, ll. 4-14, 180, ll 2-8, 329).

**5. ADDITIONAL SUSTAINING GROUNDS SUPPORT THE HEARING OFFICER'S ORDER.**

**a. THE RECORD, TAKEN AS A WHOLE, SUPPORTS A FINDING OF UNCONSCIONABILITY.**

Unconscionable conduct of a motor vehicle dealer, prohibited under the Dealers Act, is the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Brown v. Dick Smith*, at 106, 777 S.E.2d at 211.

This requirement generally deals with procedural, or contractual terms. Clearly there is evidence of this in the misleading sales documentation of the three complaints. But in this case, the issue is more akin to the post contractual actions described in *S.C. Code Ann. § 37-5-108 (2)*. The Department would likely not have sought to suspend Appellant, at least on the basis of these three complaints, if the titles had been provided within a week or two beyond forty-five days. Likewise, the Department would likely not have sought to suspend Appellant. More aptly, the complainants likely would never have complained to the Department to begin with, if the Appellant had contacted the complainants and said "There is an unavoidable problem. We are having trouble getting you a title. Can we give you your money back and put you in another car? Can we put you in a rental for the time being?" For all the insistence of Appellant that it has done nothing wrong, on this the silence in the record is like an alarm bell. It shows that even though Appellant continued to attempt to get titles, particularly after the Department intervened, the problem was not Appellant's but its customers' to suffer through. It supports a finding of unconscionability.

Even if the Hearing Officer had adopted the Appellant's position that evidence of a willful failure was required, Appellant's position reveals its own untenable nature. Even assuming that Appellant was without blame in the initial failure to deliver title, Appellant appears to regard this as a get out of jail free card regardless of whatever else happened afterward. Appellant had a legal duty to provide title for the vehicles it sold. It breached that duty. Its customers went long periods of time without the ability to use their vehicles legally on the road or sell them. There were no apparent attempts to repurchase or provide alternatives other than to wait for title. In each case that was a long time. At some point, the delay itself implies an element of willfulness.

b. **THE RECORD, TAKEN AS A WHOLE, SUPPORTS A FINDING OF BAD FAITH.**

Bad faith conduct of a motor vehicle dealer, prohibited under the Dealers Act, is the opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another, *or a neglect or refusal to fulfill some duty or some contractual obligation*, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. *Brown v. Dick Smith* at 106, 777 S.E. 2d at 211 (emphasis added).

Again, simply exceeding the forty-five day limit by a few days might not in itself justify sanctions nor in itself support a finding of bad faith. What does justify a finding of bad faith is the combination of circumstances found here, including the misleading sales documentation and the cavalier attitude toward Appellant's customers' inability to legally use their vehicles for long periods of time.

Clearly the failure to deliver title within forty-five days was a breach of legal duty to Appellant's customers. The bill of sale and Affidavits and Notifications of sale were misleading. Failing to deliver title and apparently doing nothing to remedy its customers' problems for over twice the legal limit for title delivery, aside from blaming third parties, in combination supports a finding of bad faith.

c. **THE RECORD, TAKEN AS A WHOLE, SUPPORTS A FINDING OF UNFAIR COMPETITION OR UNFAIR AND DECEPTIVE ACTS PRACTICES WITHOUT REGARD TO SECTION 56-15-40 (1) ANALYSIS.**

Section 56-15-40 lists three actions that are specifically regarded as violations under that section: arbitrary, in bad faith, or unconscionable. The headnotes of Section 56-15-40 reveal that arbitrary, in bad faith, or unconscionable conduct are merely specific instances of acts deemed to be in violation of paragraph (a) of Section 56-15-30, and not a limitation on the matters that could be determined to be unfair competition or unfair or deceptive acts or practices. Subsection (b) of Section 56-15-30 shows that courts should be guided by definitions in Section 5 of the FTC Act [15 U.S.C. § 45]. As with *S.C. Code Ann.* 39-5-20 (b), the general unfair trade practices statute, Courts are to be guided by the precedents under 15 U.S.C. § 45.

The Department likewise included Section 56-15-30 in its Official Notice of License Suspension (R. 528).

An unfair trade practice is a practice that is offensive to public policy or which is immoral, unethical or oppressive. *DeBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 270, 536 S.E. 2d 399, 407 (2000); *Young v. Century Lincoln-Mercury, Inc.*, 302 S.C. 320, 396

S.E. 2d 105 (Ct. App. 1989), *aff'd in part, rev'd in part on other grounds*, 309 S.C. 263, 422 S.E. 2d 103 (1992).

A “deceptive practice” under the Unfair Trade Practices Act is one that has a tendency or capacity to deceive. *In re Daniel*, 137 B.R. 884, 887 (1992); *DeBondt*, 342 S.C. at 270, 536 S.E. 2d at 407 (2000). A claimant need only prove there is a capacity to deceive, not that there was an intention to do so. *Inman v. Ken Hyatt Chrysler Plymouth, Inc.*, 294 S.C. 240, 243, 363 S.E. 2d 691, 692 (1988).

For an act to be a violation of the Unfair Trade Practices Act or Dealers’ Act version of it, the acts involved must adversely affect the public interest. An impact on the public interest may be shown by proof that the acts have a potential for repetition. The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts. *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E. 2d 461, 466 (2004).

Courts of other jurisdictions have found violations of Unfair Trade Practices Acts from failure to deliver title according to statute. *Antle v. Reynolds*, 15 S.W. 3d 762, 767 (Missouri App. 2000) (dealer’s failure to deliver title violating contemporary assignment statute also violated UTPA statute despite statutory violation voiding sale); *Lone Star Ford, Inc. v. McGlashan*, 81 S.W. 2d 720 (Tex. App. 1984) (UTPA statute applied to failure to deliver title despite dealer making no representations regarding title: “The DTPA mandates that when a dealer represents that he can sell used cars, he necessarily represents that he can transfer a legal title to the new owner in order to consummate a valid sale. These two

representations go hand in hand; otherwise, the dealer falsely represents that he can legally sell the car to consumers.”)

Certain of the courts have found violations of the various unfair trade practices acts from breach of warranty of title or other failure of title as required by law. *Dan Boone Mitsubishi, Inc. v. Ebrom*, 830 S.W. 2d 334 (Tex. App. 1992) (where dealership was not able to provide title to buyer as required by law prior in time to allow buyer to legally obtain license sticker, deceptive trade practices act was breached); *Regency Nissan, Inc. v. Taylor*, 194 Ga. App. 645, 391 S.E. 2d 467 (1990) (selling vehicle bought from another dealer that was later seized by law enforcement as a stolen car was unfair trade practice where dealer had reasonable notice of VIN plate discrepancy but did not take reasonable steps to determine true facts before selling the vehicle); *Saenz Motors v. Big H. Auto Auction, Inc.*, 653 S.W. 2d 521 (Tex.App. 1983) (breach of warranty of title by auction to buying dealer was violative of Deceptive Trade Practices Act); *Franklin v. State of Texas*, 631 S.W. 2d 519, 520 (Tex. App. 1982) (acts of a used car dealer in selling vehicles without were violations of deceptive trade practices act).

In short, these matters came about by a clear breach of a legal duty, they are capable of repetition because they have in fact been repeated, the sales documentation shows at least the capacity to deceive, and the time it took to deliver titles evidences a cavalier attitude toward either providing titles or otherwise resolving Appellant's customers' problems. It is unfair and deceptive as described in *S.C. Code Ann. § 56-15-30*.

**CONCLUSION**

For all the reasons set forth above, the Department of Motor Vehicles respectfully requests that the Final Order and Decision dated December 12, 2017 be affirmed and the suspension sustained.

Respectfully submitted,



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May 15, 2018  
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT

Toyota of Greer,

Appellant,

v.

South Carolina Department of Motor Vehicle,

Respondent.

Docket No.: 18-ALJ-21-0011-AP

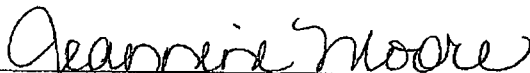
Dealer No.: 30643

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 15, 2018, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing Brief of Respondent to the following:

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Jeannine (Nina) Moore, Paralegal  
Office of General Counsel

May 15, 2018  
Blythewood, South Carolina

**THE STATE OF SOUTH CAROLINA**  
**In the Administrative Law Court**

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APPEAL FROM THE DEPARTMENT OF MOTOR VEHICLES  
Docket No. 18-ALJ-21-0011-AP

Toyota of Greer ..... Appellant,

v.

South Carolina Department of Motor Vehicles ..... Respondent.

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**APPELLANT'S REPLY BRIEF**

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**FILED**  
MAY 25 2018  
SC ADMIN. LAW COURT

## Introduction

The purpose of Procedure DE-002 is to “establish uniform guidelines for the allocation and administration of sanctions. . .” (R. 439) and to ensure “uniformed [sic], fair, impartial, and thorough . . . assessment of sanctions. . .” (R. 441) The Procedure **requires** Managers to have employees: 1) read it; 2) acknowledge that they have read it; and 3) follow it. (R.436) Uniform fairness is tantamount as Respondent’s Assistant Manager testified, “[w]e try as much as possible to treat all dealers the same.” (R. 61, ll. 12-13)

Prohibiting a corporate citizen from doing business has significant economic consequences. Appellant employs 75 and faces the loss of \$2.1 million in revenue. (R. 181) A license is a valuable property right. *See e.g., Davis v. SCDMV*, 420 S.C. 98, 800 S.E.2d 493, 496 (Ct. App. 2017). The DMV Procedure recognizes the unfairness of denying dealers their valuable property rights due to actions of others, which is why points are not assessed if the fault lies with a previous owner or lender.

The DMV now argues it can arbitrarily choose parts of the Procedure it wants to follow: this denies fundamental fairness to the Appellant. *See Hipp v. S.C. Dep’t of Motor Vehicles*, 381 S.C. 323, 325, 673 S.E.2d 416, 417 (2009). An agency abuses its discretion if it fails to follow its own regulations and procedures. *Shepherd v. Merit Systems Protection Board*, 652 F.2d 1040 (D.C.Cir.1981)<sup>1</sup>. The DMV undisputedly failed to follow its own procedures in three different respects: 1) in not requiring a willful violation; 2) in not completing a Sanction Report; and 3) in not having the Manager perform a review before sanctioning. The DMV’s investigation found only a violation for failure to deliver title. It then arbitrarily charged a different violation of “causes damage to any party” to avoid its own requirement of willfulness. The DMV’s

<sup>1</sup> See also *Moret v. Karn*, 246 F. 2d 989 (3<sup>rd</sup> Cir. 1994); *Fernandez-Rogue v. Smith*, 600 F. Supp. 500 (D.C. 1985), *WMI Liquidating Trust v. F.D.I.C.*, 110 F. Supp 3d 44, 53 (D.D.C. 2015) (Agency may have acted arbitrarily when it disregarded its established policy.)

suspension was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and should be reversed.

### Undisputed Facts.

Respondent's claim that it is not required to proceed under DE-002 is disingenuous. S.C. Code § 1-23-320(3) **requires** that a party be provided with notice which includes reference to the sections of statutes and **rules** involved. The DMV's Official Notice did just that, alleging:

The Department of Motor Vehicles (DMV) has determined that you have violated registration, dealer licensing and titling provisions of Title 56 and have accumulated 12 or more points listed below **under DMV Policy DE-002** pertaining to Dealer Sanctions.

The DMV's Dealer Manual informs dealerships that a 4-point violation will only be assessed for a **willful** failure to deliver title.<sup>2</sup> DE-002 is itself written in mandatory terms.<sup>3</sup> The

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<sup>2</sup> The DMV's Dealer Manual "lists requirements mandated by state and federal law, and DMV's policy" and notes that changes in policy may require periodic updates which will be placed on the DMV website. (R. 343) Since August 1, 2009, the Manual showed the 4-point category as "willful failure to deliver title" and "engaging in any action which causes damage to any party as 6 points to revocation." (<http://www.scdmvonline.com/Forms/Dealer-Manual.ashx>, page 5-4) Respondent failed to introduce the updated Manual, but instead submitted the 2007 Manual (R. 42, 44), which pre-dates DE-002 (R. 436) and does not include the "willful" language. This was to support its disingenuous argument that Appellant could not be prejudiced by the omission of the "willful" requirement because it did not know of the DMV's Procedure and, therefore, could not have relied upon it.

<sup>3</sup> Respondent is incorrect that certain issues raised by the Appellant have been waived because they were not ruled on by the Hearing Officer. Appellant raised the issue of the mandatory nature of the Procedure and the DMV's duty to follow it at the hearing. (R. 194-197) Appellant was not required to receive a ruling on a Motion to Reconsider before filing an appeal. The Hearing Officer did rule and found:

- a. Section III.C.3. of DMV Procedure DE-002 requires that a Sanctions Report be completed if the administrative investigation reveals violation. Petitioner presented two Sanction Reports which list the violations as "Failure to deliver title within 45 days of date of sale" (Petitioner Exs. 6 and 8) Four points are assessed as the sanction on both reports. Petitioner did not present evidence of a Sanction Report related to Tony McAllister's complaint. (R. 220)

I find that the assessment of 4 point violations were made pursuant to a finding by Petitioner of a "willful failure to deliver title to buyer or department within 45 days of date of sale." Having made these findings, Petitioner is required to show that the failures to deliver title were "willful" as defined in its Procedure DE-002. (R. 220)

The Hearing Officer then erroneously ruled in contradiction to his Finding of Facts:

I conclude that the evidence showed that the Respondent committed the violation of failing to deliver title within the statutory period. (R. 226)

The Official Notice of License Suspension listed each complaint as "[e]ngaging in any action which causes damage to any party or to the public" with a parenthetical "(failure to deliver within 45 days of

Procedure contains a 4-point violation for “willful failure to deliver title within 45 days” and a separate 6-point up to revocation violation for “engaging in any action which causes damage to any party or to the public” (R. 449) DMV cannot now argue the 6 was graciously reduced.

Section III.C.3. of DE-002 requires a Sanctions Report be completed if the investigation reveals a violation. Only two were presented, implying no violation was found for the third. This would reduce the points from 12 to 8, and would not support suspension. The two found only 4-point violations for “failure to deliver title within 45 days of date of sale.” (R. 451, 469)<sup>4</sup> There is also no evidence that the DLAU Manager reviewed the investigations or sanctions as required by the Procedure.<sup>5</sup>

The Procedure provides the “failure to deliver title violation” is not considered “willful” if the dealer can provide a written statement, substantiated by a DLAU agent, identifying a prior seller or lien holder who has failed to deliver the title.<sup>6</sup> (R. 441) This is reiterated in the definition of “willful failure to deliver title.” (R. 439) Leaks and Benjamin both agreed that willfulness is required to assess 4 points for failure to deliver title and that the DMV cannot find willfulness if

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date of purchase).” . . . DE-002 contains no provision that asserts the Department is limited to any particular category. (R. 227)

There is no duty for Appellant to “put these procedural issues before the Hearing Officer for correction” if he has already ruled. In so ruling, the Hearing Officer removed the requirement that the failure to deliver title be “willful” even though he had previously ruled that willfulness was a requirement to find a violation. This is not a failure by the Hearing Officer to rule on an issue that would require a motion to alter or amend the judgment in order to preserve the issue for appellate review as required by *I’On LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). The Hearing Officer clearly ruled, albeit in error, on the issue of whether the procedures in the DE-002 were required. The Hearing Officer also ruled that a Sanction Report was required if the DMV found a violation (R. 220) and then erroneously ruled that that the Department’s suspension should be upheld. Therefore, Appellant’s Issues IV, V, VI, and XIV are properly preserved for appeal.

<sup>4</sup> Benjamin and Leaks signed the Sanction Reports, agreeing that these were the offenses being charged. (R. 451, 469)

<sup>5</sup> Leaks testified that she signed off on Sanctions rather than the Unit Manager. (R.40, ll. 18-20)

<sup>6</sup> DMV’s argument on page 17 of its Brief that willfulness only applies to a criminal violation is belied by the Definitions Section (R. 439) and Section III. C.2 (R. 441) dealing with all failures to deliver titles within 45 days.

a third party failed to deliver title to the dealer. (R. 68, ll. 13-17; R. 115, ll. 24 – 116, l. 11)<sup>7</sup> Benjamin also admitted he received a written statement from the Appellant as to all three Complaints identifying a third party who failed to deliver title and that he substantiated the statements. (R. 124, ll. 9-16)<sup>8</sup> The record as a whole shows that 12 points should not have been assessed under the Procedure and that the suspension should be rescinded.

**I. The DMV has the burden of proof**

OMVH Rule 15(b) makes clear that the burden of proof is on the Department:

In matters involving... the imposition of sanctions, including the suspension . . . of a license, . . . the Department of Motor Vehicles shall have the burden of proof.

The Department's reliance on *Hamm v. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 is misplaced. *Hamm* addresses an order from the Public Service Commission. Orders from the PSC dealing with complicated calculations of a proper rate of return are deemed prima facie reasonable by statute and the burden is statutorily placed on the party attacking the order to show that it is unlawful or unreasonable. S.C. Code. Ann. § 58-9-1450. This same burden does not apply in the present case.

**II. The Department's Suspension was Arbitrary and Capricious and Should be Rescinded**

The DMV chose to administer the statutes entrusted to it by promulgating DE-002. The DMV's Official Notice explicitly referred to the Procedure. DMV Counsel acknowledged as much in his Opening Statement:

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<sup>7</sup> Respondent has not objected to the finding that the DMV assessed the violations "pursuant to a finding by Petitioner of a 'willful failure to deliver title to buyer or department within 45 days of date of sale; . . .'" therefore the DMV was required to show that the failures to deliver title were "'willful' as defined in DE-002."

<sup>8</sup> It is important to note that the Gillian complaint involved a 9 year old lien (R. 316) that had been satisfied 4 years earlier (R. 137). No lien existed at the time of the sale as Appellant properly represented. This alone would drop the points from 12 to 8.

“... we have a procedure we go by in the Department of Motor Vehicles and it has to do with sanctions for dealerships. . . . According to our procedure if we’re going to follow our own rules, that is the least we can do. . . .” (R. 13)

The DMV did not follow its own rules when it imposed a 4-point violation by ignoring the willfulness requirement, not presenting a Sanction Report for one of the Complaints (indicating that the investigation did not reveal a violation), and not having the Complaints reviewed by the DLAU Manager.<sup>9</sup>

Respondent now insists it can ignore its mandatory Procedure,<sup>10</sup> and consider factors not included in the definition of “willful.”<sup>11</sup> Benjamin admitted he viewed “willful” as being “subjective” despite the clear definition in the Procedure and considered any failure to deliver a car without a title as willful. (R. 114, l. 12 – R. 115, l. 8) He ignored the mandatory Procedure when he charged Appellant with 4-point violations even though written statements were provided identifying third parties who failed to deliver title (R. 217-219) and he accepted the statements as true (R. 124, ll. 9-16), thereby substantiating them. Leaks admitted that the Procedure required “willfulness” and that she couldn’t change the Procedure (R. 90, ll. 1-7) Contradicting herself, she then testified the DMV could arbitrarily remove the willfulness requirement by omitting it from the letters and Official Notice sent to Appellant. (R. 82, ll. 8-11) The Hearing Officer erred when he adopted the same arbitrary deviations in his Final Decision. This Court should therefore reverse the Final Decision and rescind the suspension.

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<sup>9</sup> It became obvious why the Manager did not review the Complaints when the Assistant Manager admitted earlier that if a previous customer contributed to the problem, the Manager would not support a suspension. (R. 61, ll. 10-21)

<sup>10</sup> Leaks references to the fact that a Notice of Suspension was not previously issued when her immediate supervisor Clary felt the customer contributed to the problem with getting title (R. 61, ll. 10-21) actually supports the idea that the failure to deliver title must be “willful.”

<sup>11</sup> Respondent argues that the length of time beyond 45 days can be considered despite the fact the Procedure looks only at the actor who caused the delay, not the time it took for the person to act.

### III. The Evidence as a Whole Does not Support the Suspension

Even if the DMV could arbitrarily change the offense to “engaging in any action which causes damage to any party or to the public,” it must prove a violation of the Dealer’s Act, which it has not done. S.C. Code Ann. § 56-15-40(1) provides:

- A. It shall be deemed a violation of paragraph (a) of Section 56-15-30 for any . . . motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.

The fact that both the Dealers Act and the Unfair Trade Practices Act allow the courts to be guided by the definitions in the Federal Trade Commission Act does not mean the two statutes are interchangeable. Even if the UTP Act cases can inform the definition of “unfair,” the terms “unfair or deceptive acts or practices” under § 56-15-30 must be viewed in conjunction with §56-15-40. Respondent cites only one case, *DeBondt v. Carlton Motorcars, Inc.*, which addresses both statutes. 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000). In that case, the Court of Appeals applied different standards to each cause of action and required a finding that the dealership’s actions were arbitrary, in bad faith, or unconscionable to constitute a violation of the Dealers Act. *Id.*

The record shows that Appellant took reasonable steps to obtain titles in a timely manner.<sup>12</sup> Appellant processed over 25,000 titles during the relevant time period and implemented an effective system to do so. (R.176, ll. 17 -20; R. 181, l. 25 – R. 184, l. 8) Appellant employed 10 clerks to handle title work for its 4 stores, not 2 employees as claimed by

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<sup>12</sup> The Hearing Officer erroneously found Appellant’s claim that the DMV could not prove willfulness was “partly because of Respondent [sic] claim that due to the volume of business it handled, occasional problems were inevitable and could happen to anyone.” (R. 226-227) Since this was ruled upon, it was unnecessary it to be raised again in a Motion to Reconsider as Respondent suggests.

Respondent. (R. 330). The sales volume compared to three complaints<sup>13</sup> demonstrates that Appellant was not acting in a manner that was arbitrary, in bad faith, or unconscionable.<sup>14</sup>

The evidence as a whole shows there was no violation as to Quality Auto,<sup>15</sup> which purchased the Chrysler 300 at auction<sup>16</sup> with "Title Attached," meaning it was aware that the title was not available and that the car could be returned if it wasn't received within 30 days.<sup>17</sup> (R. 31, ll. 2-23; R. 33, ll. 1-17) Leaks agreed that under the auction policy the sale was not final until title was delivered and that Quality Auto had received title within 45 days of the final sale. Therefore, there was no violation. (R. 72, ll. 11-22)<sup>18</sup> Again, this one adjustment would drop the points below the sanction level.

Appellant did not act arbitrarily, unconscionably, or in bad faith when it sold cars after first confirming with Ford Credit and Carolina Title Loans that their loans were satisfied. Lienholders are required to execute a release of their security interest within 10 days of a demand and within a maximum of 30 days. S.C. Code. Ann. § 56-19-680. Because the loans were paid,

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<sup>13</sup> Respondent improperly references sanction letters dating back to 2012. The Hearing Officer excluded references to any violations other than the three contained in the Official Notice (R. 51, ll. 5-12, R.60, l. 23- 57, l. 1), finding Appellant was not on notice that any events for which points had been previously assessed were at issue.

<sup>14</sup> Respondent notes that the DMV met with Appellant in October of 2016, however there was no testimony that Appellant failed to follow any of the suggestions made at the October meeting. There is also no evidence that Appellant failed to take action until complaints were made to the DMV. The evidence is to the contrary. Appellant received the lien release letter from Chase bank April 12<sup>th</sup> (R. 323) while McCallister's complaint was dated April 26<sup>th</sup> (R.498). Sheila Gilliam's complaint was not received by the DMV until June 28<sup>th</sup> (R 476), the same day that Ford Credit issued its release letter (R.317).

<sup>15</sup> Respondent incorrectly asserts that Mr. Bocook testified that he called the dealership and received no response when he testified that he called the auction and asked it to contact Appellant. (R. 23, l. 10-p. 24, l. 1) There is no evidence that the auction did so.

<sup>16</sup> Quality Auto Appellant does not deny that it sold the Chrysler 300 through the auction, however the Hearing Officer mischaracterized the Bill of Sale as being prepared and executed by the Appellant (R. 216) when it was not. (R. 148, l. 1-22)

<sup>17</sup> Appellant did not suggest that some unknown person offered to buy back the car purchased by Quality Auto as asserted by Respondent. Mr. Bocook testified that he had an absolute right to return the car to the auction and received a refund if he didn't have a title within 30 days. (R. 33, ll. 14-17)

<sup>18</sup> The Hearing Officer found, "In the Bocook Complaint, Respondent asserted that it knew of the title loan lien before it put the vehicle on the market, it either had to know or not know where to contact the lender and receive the title." (R. 227) This is a misstatement. Ms. Powell testified that she contacted the Greer branch and received the payoff information and paid it off. (R. 144) It was not until after the car was sold that it became known that the branch which had originally held the title had closed. (R. 145-146) Again, the Hearing Officer didn't fail to address the issue. It was therefore unnecessary for to raise it in a Motion to Reconsider.

it was not misleading to inform the purchaser that there were no liens<sup>19</sup> and it was error for the Hearing Officer to find to the contrary.<sup>20</sup> Further, the Bill of Sale signed by Quality Auto was not false or misleading as it stated that the vehicle was “free of all liens and encumbrances in the buyer’s name [Quality Auto] . . .” (R. 465) It is undisputed that there were no liens in Quality Auto’s name when it bought the car. Even if this Court were to find that Appellant did not have adequate assurances regarding the status of the title before the Mazda was sold to McAllister, Appellant would only have 4 points and suspension would not be warranted.<sup>21</sup>

Finally, even if the Hearing Officer properly considered the comments contained in Benjamin’s Investigation Report, it demonstrates that Appellant had already taken corrective action to address any problems. There is no support for Respondent’s statement that “bad deals can also cause difficulty in acquiring titles.” “Bad deals” may simply be ones that were not profitable for the dealership. The comment references four separate dealerships with no reference with any particular problems Toyota of Greer had experienced.

**A. Appellant’s Actions were not Arbitrary**

A violation of the Dealers Act is not shown by the mere potential for actions to deceive customers or the potential for repetition. “Arbitrary” for purposes of the Dealers Act is defined as “acts which are unreasonable, capricious or nonrational; not done according to reason or

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<sup>19</sup> Appellant paid off the loan with Carolina Title Loan. Prior to the sale to Sheila Gilliam the lender confirmed the 9 year-old loan was satisfied 4 years earlier. (R. 137, ll. 2-11) The previous owner of the Mazda also confirmed there was no outstanding lien prior to the sale to McCallister. (R. 161, l. 8-10)

<sup>20</sup> Respondent incorrectly suggests that Appellant did not preserve Appellant’s Issues X and XI because the Hearing Officer ruled on these issues finding: “. . . the failure to deliver title was accompanied by a false and misleading bill of sale or affidavit and notification of sale, stating that there were no liens not listed on those statements.” (R. 226) The Final Decision specifically finds: “While the Respondent produced evidence that the vehicle was sold through an auction, a Bill of Sale was prepared and signed by a representative of the Respondent . . .” (R. 216) It was therefore unnecessary for these issues to be raised or ruled upon in a Motion to Reconsider.

<sup>21</sup> Respondent suggests that Appellant took the Mazda on trade from someone other than the owner and did not contact the actual owner until several months after the car was sold to Tonya McAllister. This is not true. Mr. Gorman owned the Mazda but did not inform Appellant the car was registered in North Carolina. (R. 163, ll. 2-4) An inquiry on the South Carolina DMV system showed the last South Carolina owner. (R. 161, ll. 15-19) Appellant immediately began trying to contact Mr. Gorman, who did not initially return the calls of the title clerk. (R. 162, ll. 4-7)

judgment; depending on will alone.” *Taylor v. Nix*, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (1992). A Dealer’s conduct under the Dealer’s Act need only have some reasonable basis. *Id.* Appellant had a reasonable basis to believe title would be provided in the required time period.

**B. The Record does not support a finding of unconscionability**

Unconscionability is the absence of meaningful choice on the part of one party due to one-sided contract provisions together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Hardee v. Hardee*, 355 S.C. 382, 585 S.E.2d 501 (2003).<sup>22</sup> No such contractual provisions exist in the present case.

**C. The Record does not support a finding of bad faith**

“Bad faith” has been defined as: “[t]he opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another, or a neglect or refusal to [fulfill] some duty or some contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive.” *State v. Griffin*, 100 S.C. 331, 333, 84 S.E. 876, 877 (1915). There is no evidence that Appellant was prompted by an “interested or sinister motive” to deceive its customers. *State v. Griffin*, 100 S.C. 331, 333, 84 S.E. 876, 877 (1915).

Respondent cites *Brown v. Dick Smith Nissan, Inc.*, 414 S.C. 101, 777 S.E.2d 208 (2015) as an example of bad faith. The facts in *Brown* are not analogous.<sup>23</sup> Dick Smith intentionally financed the wrong car in Brown’s name, accepted the money from the lender, and allowed the car Brown had purchased to be repossessed. In contrast, Appellant’s employees consistently

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<sup>22</sup> Respondent argues that this case is analogous to the post contractual actions described in S.C. Code § 37-5-108(2). That statute is not instructive, stating only, “with respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction. . . .”

<sup>23</sup> Brown purchased a Mazda 6 from Dick Smith and sought financing. Dick Smith misrepresented to one of the lenders that Brown was the relative of a Dick Smith employee and actually requested and received financing for a Nissan Altima rather than the Mazda 6. When Brown asked to change the paperwork to reflect the correct car, the lender refused to do so and Dick Smith refused to take any corrective action.

worked to obtain the titles from the third-parties who failed to provide them. Respondent refers to cases where courts have found that the failure to deliver title is “unfair” when it was actually other actions by the dealership that were found to be actionable.<sup>24</sup>

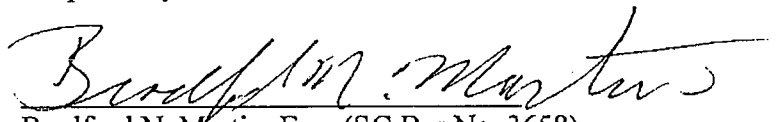
### CONCLUSION

DE-002 required a finding of a willful failure to deliver title within 45 days in order for a 4-point violation to be issued. The DMV admitted that a violation was not willful if the previous owner or lienholder did not timely provide the title. It is undisputed that in all three cases the prior owner or lienholder did not timely provide the title. Toyota of Greer provided a written statement each time, which was substantiated by Benjamin.

Taking the record as a whole, the DMV has failed to meet its burden of proof and its actions are not valid and reasonable. Appellant asks this Court to reverse the finding of the Hearing Officer and rescind the suspension.

Respectfully submitted,

May 25, 2018



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ATTORNEYS FOR TOYOTA OF GREER

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MAY 25 2018

SC ADMIN. LAW COURT

<sup>24</sup> See *Dan Boone Mitsubishi, Inc. v. Ebrom*, 830 S.W.2d 334 (Tex. App. 1992) (finding an unfair trade practice as a result of continuing misrepresentations); *Regency Nissan, Inc. v. Taylor*, 391 S.E.2d 467 (Ga. App. 1990) (finding an unfair business practice arose from the failure to take reasonable measures to ascertain the true facts after being placed on reasonable notice that the car might be stolen); *Antle v. Reynolds*, 15 S.W.3d 762, n.2 (Mo. App. 2000) (declining to find that a claim of false representation could be maintained when title was not delivered and holding only that common law fraud claims could be pursued when other claims of fraud related to the transaction were also alleged).

THE STATE OF SOUTH CAROLINA  
In the Administrative Law Court

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APPEAL FROM THE DEPARTMENT OF MOTOR VEHICLES  
Docket No. 18-ALJ-21-0011-AP

Toyota of Greer ..... Appellant,

v.

South Carolina Department of Motor Vehicles ..... Respondent.

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**PROOF OF SERVICE**

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I, Renique Robinson, Legal Assistant at Bradford Neal Martin & Associates, PA, hereby certify that due and proper service of the document(s) affixed hereto and described below was made by depositing a true copy(ies) of same in the United States Mail at Greenville, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon.

**DOCUMENTS:** Appellant's Rely Brief

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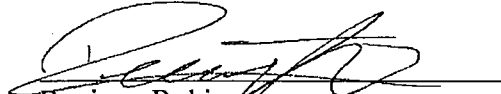
**FILED**

MAY 25 2018

SC ADMIN. LAW COURT

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Date: 5/25/18

  
Renique Robinson

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SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Toyota of Greer	)	Docket No. 18-ALJ-21-0011-AP
	)	
Appellant,	)	
	)	
v.	)	
	)	<b>TOYOTA OF GREER'S MOTION FOR</b>
South Carolina Department of	)	<b>RECONSIDERATION/REHEARING</b>
Motor Vehicles	)	
	)	
Respondent.	)	
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To: The Honorable Deborah Durden, Presiding Judge:  
Appellant, Toyota of Greer, pursuant to Rule 59(e), SCRPC, SCALC Rule 40, and S.C. Code Ann. § 1-23-380(A)(2), moves the Court to alter, amend or otherwise reconsider its Order upholding the suspension of Toyota of Greer's Dealer's license filed July 31, 2018. Appellant's Motion for Reconsideration/Rehearing is based upon the following issues:

**I. THE COURT'S FINDING THAT THE DMV WAS NOT REQUIRED TO FOLLOW PROCEDURE DE-002 IS THE DANGEROUS RESULT OF WHICH OUR SUPREME COURT WARNED**

**A. The Court's Finding Misapprehends the South Carolina Supreme Court's Opinion in *Joseph* that Checks the Actions of the "Administrative State."**

The South Carolina Supreme Court is keenly aware of the potential dangers of the "leviathan" of administrative agency rule-making, calling it "the so-called Fourth Branch of government" and warning against "the danger it poses to the once sacrosanct constitutional principle of separation of powers." *Joseph v. S.C. Dep't of Labor*, 417 S.C. 436, 455-56, 790 S.E.2d 763, 773 (2016) (Kittredge, J. concurring, and adopted by the Majority). This Court misapprehends *Joseph* in holding that because Procedure DE-002 was not promulgated as a regulation, it does not have to be followed.

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SC ADMIN. LAW COURT 25

The South Carolina Supreme Court's test to determine if an agency has created the equivalent of a regulation is:

Whether a particular agency creates a regulation or simply announces a general policy statement depends on whether the agency action establishes a "binding norm." *Home Health Serv., Inc. v. S.C. Tax Com'n*, 312 S.C. 324, 328, 440 S.E.2d 375, 378 (1994). The "key inquiry" is

the extent to which the challenged policy leaves the agency free to exercise its discretion to follow or not to follow that general policy in an individual case, or on the other hand, whether the policy so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule's criterion. As long as the agency remains free to consider the individual facts in the various cases that arise, then the agency action in question has not established a binding norm.

*Sloan*, 370 S.Ct. 491, 636 S.E. 2d 598 (Toal, C.J., dissenting) (quoting *Ryder Truck Lines, Inc. v. United States*, 716 F.2d 1369, 1377 (11th Cir. 1983))...

*Joseph*, 417 S.C. at 454, 790 S.E. 2d at 772.

In *Joseph*, the Court found that the South Carolina Board of Physical Therapy created a binding norm that it was required to follow (the 2011 Position Statement) and, therefore, the Position Statement had the effect of a regulation under the APA.<sup>1</sup>

In the present case, Procedure DE-002 does not give the DMV discretion as to whether it must be followed. Employees are responsible for "reading, electronically acknowledging and following" the Procedure. (R. 436) DE-002 uses the term "will" and not "may." See *State v. Hill*, 314 S.C. 330, 332, 444 S.E.2d 255, 256 (1994) ("The word 'may' ordinarily signifies permission and generally means the action spoken of is optional or discretionary." (quoting *Robertson v. State*, 276 S.C. 356, 358, 278 S.E.2d 770, 771 (1981) ) (internal quotation marks omitted)). This is a binding norm.

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<sup>1</sup> It further found that the Board violated the APA by adopting the 2011 Position Statement without promulgating it as a regulation.

The DMV had the discretion to pick the category, but once picked, it had to follow the required point assignment. The DMV chose 4 points for the 45-day violation. It cannot ignore the binding norm that the finding must be willful. Likewise, the DMV was free to pick "Engaging in any action which causes damage to any party or to the public," if supported by its investigation. If picked, it had the discretion to charge 6, 8, 10, or 12 points, up to revocation. However, the binding norm did not allow an assistant manager to choose 4 points. The choice of a 4-point sanction was a choice that the violation was not "damage to any party of to the public." This unilateral action by an assistant manager is a perfect example of the danger imposed by an unchecked administrative state.<sup>2</sup>

The DMV was overreaching when it failed to follow its binding norms and its decision to suspend Appellant's license should be rescinded.

**B. The Court Overlooks the Fact that the DMV cannot Arbitrarily Disregard DE-002 without Adequate Explanation.**

Even a general policy statement cannot be arbitrarily ignored by an agency as noted by a unanimous United States Supreme Court. It acts arbitrarily or capriciously when it disregards its

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<sup>2</sup> There were several other unilateral actions by the assistant manager showing the danger imposed by an unchecked administrative state, she:

- 1) Ignored the definition of "Willful Failure to Deliver Title" in Section I, Definitions (R.439);
- 2) Ignored the requirement in Section II, Purpose/Background requiring "...uniform guidelines for the application and administration of sanctions for dealers... who violate rules, regulations, procedure, or law." (R. 439 emphasis added);
- 3) Ignored the requirements of Section III – General Guidelines – C.2. that there can be no willful failure to deliver the title violation if a prior seller or lienholder has failed to deliver the title as required by law. (R. 441);
- 4) Ignored the requirements of Section III D Headquarters Review and Sanction Approval to have a separate review and approval of any sanction by having the same person finding the violation reviewing and approving her own findings. (R. 441) Leaks testified she signed off on the sanctions and reviewed them. (R. 39);
- 5) Ignored Section III D.4. Headquarters Review and Sanction Approval requirement that the DLAU "will adhere to documented business process." (R. 441); and
- 6) Ignored Section III Guideline G.7 that "[p]rior to issuance of an Official Order of Suspension... the DLAU Manager will perform a review of the dealer's record insuring the appropriateness and sustainability of the violations whose points assessments are causing the suspension prior to approving the suspension." (R. 442, emphasis added).

established policy without adequate explanation. See *WMI Liquidating Trust v. F.D.I.C.*, 110 F. Supp. 3d 44, 53 (D.D.C. 2015) citing *INS v. Yang*, 519 U.S. 26 (1996).

### 1. The DMV cannot arbitrarily depart from its general procedure

Appellant does not argue that the DMV lacked any discretion regarding its procedures. It is prohibited, however, from arbitrarily disregarding its established procedure. See *Yang* 519 U.S. at 32 (Scalia, J.) ("Though the agency's discretion is unfettered at the outset, if it announces and follows—by rule or by settled course of adjudication—a general policy by which its exercise of discretion will be governed, an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action that must be overturned as 'arbitrary, capricious, [or] an abuse of discretion' within the meaning of the [APA]."). The DMV announced its procedure and published it to all dealers in its Dealer Wholesale Manual. This was never altered by the DMV.

Other jurisdictions have similarly found that an agency abuses its discretion if it fails to follow its own internal procedures. Two cases involving internal procedures of the INS are instructive. In *Moret v. Karn*, 746 F.2d 989 (3d Cir.1984), the Third Circuit found that the Attorney General abused his discretion when he failed to follow his Status Review Plan.

Moret was a "Mariel Cuban" immigrant who came to the U.S. in the 1980s without a visa or other travel documents. Persons with his status were eligible for parole and he was released on parole. For a variety of reasons, his parole had been revoked and restored on several occasions. His last placement was terminated when Moret left the program without permission. The INS notified Moret that his parole been revoked "as a result of [his] failure to maintain the conditions of [his] resettlement."

The Third Circuit found the INS's internal procedures allowed for the revocation of a Mariel Cuban's parole when either the alien had been convicted of a felony or serious

misdemeanor, or when the INS determined that the alien presented a clear and imminent danger to the community or himself. The Third Circuit held that the INS abused its discretion in terminating Moret's parole without following its internal procedure by requiring a finding of clear and imminent danger. Likewise, the DMV abused its discretion by not following the requirements of DE-002.

The Eastern District of New York similarly found the INS abused its discretion in denying an alien's application for stay of deportation because the agency failed to follow internal guidelines. *Piper v. Crosland*, 519 F.Supp. 962 (E.D.N.Y.1981).<sup>3</sup> The Third Circuit found that although the INS has discretion in deportation matters, it must follow the rules adopted by the INS.<sup>4</sup> The INS was found to have abused its discretion in denying the petition because it did not articulate a determination, as required in the internal Operations Instruction, that the petition was "frivolous" or that there were "substantial adverse factors" which "would probably lead" to the denial of extended voluntary departure. Likewise, the DMV abused its discretion by not following its adopted procedures.

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<sup>3</sup> Piper entered the United States on a one-year student visa. After overstaying his visa, he was involved in numerous efforts to extend his ability to stay in the country, the last of which was an I-130 petition by his stepmother to have him classified as an Alien Relative. Petitioner applied to the District Director to extend the stay of his order of deportation pending adjudication of an appeal and the I-130 petition. The application was denied.

<sup>4</sup> INS's internal Operations Instruction 242.1(a)(25) provided in pertinent part:  
Pending final adjudication of a petition which has been filed, the district director will not deport, or institute proceedings against, the beneficiary of the petition if approval of the petition would make the beneficiary immediately eligible for adjustment of status under section 245 of the Act or for voluntary departure under the Service policy set forth in Operations Instruction 242.10(a)(6)(i). The district director may, however, seek to deport or institute proceedings against the beneficiary when it is determined that the petition is frivolous or there are substantial adverse factors which, based on the district director's opinion, would probably lead to the denial of adjustment of status or extended voluntary departure in the exercise of discretion.

2. **DE-002 was the DMV's established procedure when the sanctions were assessed and cannot be arbitrarily ignored by an assistant manager.**

DE-002 was the DMV's announced general policy, as shown by the DMV's Dealer and Wholesaler Manual,<sup>5</sup> Sanction Letters (R. 431) and Official Notice<sup>6</sup> (R. 528). The DMV's counsel acknowledged the applicability of the Procedure at the Hearing:

"... we have a procedure we go by in the Department of Motor Vehicles and it has to do with sanctions for dealerships. . . . According to our procedure if we're going to follow our own rules, that is the least we can do. . . ." (R. 13)

The DMV introduced DE-002 into evidence as the relevant procedure (R. 94) and admitted it was required to follow the procedure (R. 87-90): "it is the least [it] can do..."

The DMV could have revised Procedure DE-002 to remove the "willfulness" requirement for the 4-point violation for failure to deliver title within 45 days, or to allow the charging of a 4-point sanction under the violation of "damage to the public". It did not. No such change was placed on the website. Instead, the assistant manager decided to make up her own findings, and push them through unchecked.

If the DMV's internal investigation had found Appellant's actions supported a finding of "damage to any party or to the public" it could have included that finding in its Reports and chosen to charge 6 or more points. The DMV chose not to make that finding in the Sanction Reports, but

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<sup>5</sup> The DMV's Dealer Manual "lists requirements mandated by state and federal law, and DMV's policy" and notes that "changes in law or policy may require periodic updates . . . [which] will be placed on DMV's website." (R. 343) emphasis added. The Manual provides on p. 5-3, "The Department of Motor Vehicles (DMV) has established **uniform guidelines** for the application and administration of sanctions for dealers . . . . The DMV has established a permit system for performance violations to evaluate the operational record of a dealer . . . (See the next page for specific performance violations and the assigned point value.) (emphasis added)" Since August 1, 2009, the Manual showed the 4-point category as "willful failure to deliver title" and "engaging in any action which causes damage to any party" as 6 points to revocation. (<http://www.scdmvonline.com/Forms/Dealer-Manual.ashx>, page 5-4)

<sup>6</sup> S.C. Code § 1-23-320(3) requires that a party be provided with notice which includes reference to the sections of statutes and rules involved.

instead found a 4-point violation for failure to deliver title within 45 days. (R. 451, 469). DE-002

Section III.D.2. states:

In cases of a performance violation(s), the Dealer Licensing and Audit Unit Manager or designee will review and, if approved, assess points to the dealer license utilizing DMV Form DE-002B, "Performance Sanctions/Violations."

(R.441) The only option on the grid for a 4-point sanction was for "willful failure to deliver title ... within 45 days..." (R. 449).

The Assistant Manager testified that she both reviewed and signed off on all sanctions. (R. 39) The Court erred in finding that her testimony that she consulted her manager on a single complaint meant that he reviewed all sanctions. The testimony, in fact, was that her supervisor had overruled her when she wanted to assess where a customer contributed to the problem (R. 61), suggesting he would have likewise overruled her decision on the McCallister complaint had he reviewed it.

The unanimous United States Supreme Court in *Yang* recognized that an agency can define terms within its own policies. The DMV did so in limiting the 4-point violation to "willful" failure to deliver title and defining "willful" to exclude circumstances in which a third party has failed to deliver title to the dealership. (R. 439) *See Yang*, 519 U.S at 32. The DMV's decision to charge the 4-point violation must, therefore, be supported by its own internal definitions related to that charge.<sup>7</sup> As in *Moret* and *Piper*, the DMV is not free to create a new reason for sanctioning Appellant, based on a hybrid violation created by its assistant manager.

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<sup>7</sup> As the Third Circuit recognized in *Moret v. Karn*, 746 F.2d 989 (3rd Cir. 1984):

Even if the evidence in the record, combined with the reviewing court's understanding of the law, is enough to support the order, the court may not uphold the order unless it is sustainable on the agency's findings and for the reasons stated by the agency.

*Id.* at 992, citing K. Davis, Administrative Law Treatise Sec. 14:29 (1980).

Appellant raised the issue of the DMV's duty to follow the Procedure at the hearing (R. 194-197) as well as the fact that without a finding of willfulness, the 4-point violations could not be charged. (R. 196) The Hearing Officer agreed with Appellant and found that the DMV had an established policy that "required" "willfulness" in order to assess a four-point violation for failure to deliver title.<sup>8</sup> The Hearing Officer also agreed Section III.C.3. of DE-002 requires a Sanctions Report be completed if the investigation reveals a violation. (R. 220) Only two Reports were presented, implying no violation was found for the third. The Hearing Officer then inexplicably made the contradictory ruling that:

DE-002 contains no provision that asserts the Department is limited to any particular category. An action which causes damage to any party or to the public is a separate violation on the grid. It provides for sanction points up to 6<sup>9</sup> for each repetition. The actions of the Respondent in this matter meet the definition of arbitrary" or ""unreasonable, capricious or non-rational; depending on the will alone."

(R. 227).

This was a finding by the Hearing Officer that the DMV could arbitrarily choose to ignore its Sanction Reports and DE-002 and create a new sanction category. (R.441) "Willful failure to deliver title" is a four-point violation on the grid while "damage to any party or to the public" starts

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<sup>8</sup> Section III.C.3. of DMV Procedure DE-002 requires that a Sanctions Report be completed if the administrative investigation reveals violations. Petitioner presented two Sanction Reports which list the violation as "Failure to deliver title within 45 days of date of sale." (Petitioner Exs. 6 [R.451] and 8 [R. 469]) Four points are assessed as the sanction on both reports.

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I find that the assessments of 4 point violations were made pursuant to a finding by Petitioner of a "willful failure to deliver title to buyer or department within 45 days of date of sale." Having made these findings, Petitioner is required to show that the failures to deliver title were "willful" as defined in its Procedure DE-002.

(R. 220)(emphasis added)

<sup>9</sup> The use of the phrase "sanction points up to 6" is not inconsequential. The violation for "damage to any party or to the public" would have to carry a penalty of "up to 6 points" rather than "6 points to revocation" to argue that the Department could assess 4 points under this category. No such change was ever made to the procedure, and therefore never posted on the website.

at 6 points. The two categories do not overlap in the points; therefore, the Hearing Officer's finding that "damage to any party or to the public" can be substituted as a 4-point violation erroneously ignores DE-002 Section III.D.2. and results in holding it is not mandatory and can be arbitrarily disregarded.<sup>10</sup> This Court should reconsider and rescind the license suspension.

**3. The DMV presented no adequate explanation for disregarding DE-002**

The DMV presented no adequate explanation for disregarding its procedure of requiring willfulness for 4-point violations for failure to deliver title and categorizing the violation as a subset of the violation for "engaging in any action that causes damage to any party or to the public" in the Sanction Letters and Official Notice. The Procedure provides the "failure to deliver title violation" is not considered "willful" if the dealer can provide a written statement, substantiated by a DLAU agent, identifying a prior seller or lien holder who has failed to deliver the title. (R. 441) The DMV employees testified that they did not require willfulness when investigating the complaints against Appellant, but admitted that the procedure required it. (R.82, 87-88, 113-116)<sup>11</sup> The only explanation given by the DMV's Assistant Manager of the DLAU was that she chose not to include the word willful in the Sanction Letters sent to Appellant (R.82)

The arbitrary and capricious actions of the DMV require a reversal of the suspension of the Dealership's license.

**4. Appellant's substantial rights were violated as a result.**

A license is a valuable property right. *See e.g., Davis v. SCDMV*, 420 S.C. 98, 800 S.E.2d 493, 496 (Ct. App. 2017). Appellant employs 75 and faces the loss of \$2.1 million in revenue. (R.

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<sup>10</sup> The Court erred in finding that the Hearing Officer did not rule on whether DE-002 was mandatory. Appellant raised this error to the Court.

<sup>11</sup> Benjamin admitted he considered any failure to deliver a car without a title as "willful" despite the clear definition in the Procedure. (R. 114, l. 12 – R. 115, l. 8) He ignored the Procedure when he charged Appellant with 4-point violations even though written statements were provided identifying third parties who failed to deliver title (R. 217-219) and he accepted the statements as true (R. 124, ll. 9-16), thereby substantiating them.

181). 75 employees face the loss of a week's pay. The DMV Procedure recognizes the unfairness of denying dealers their valuable property rights due to actions of others, which is why points are not assessed if the fault lies with a previous owner or lender. The Procedure also recognizes the seriousness of a suspension, thus requiring the review by the Unit Manager prior to issuance. (R. 442) No review was performed.

The substantial rights of the Dealership were prejudiced due to the arbitrary and capricious nature of the DMV's application of Procedure DE-002, which would allow the Department to ignore its own stated purpose of establishing uniform guidelines. (R. 439) *See Trowell v. S.C. Dept. of Public Safety*, 681 S.E.2d 893, 384 S.C. 232 (Ct. App. 2009). Therefore, this Court should reconsider its Order and rescind the license suspension.

**II. THE FAILURE OF THIRD PARTIES TO DO LEGALLY REQUIRED ACTS CANNOT BE THE BASIS FOR FINDING APPELLANT'S ACTS WERE ARBITRARY, IN BAD FAITH, OR UNCONSCIONABLE**

**A. The Court Erred in Finding that the DMV met its Burden of Proving a Violation of the Dealers Act<sup>12</sup>**

The DMV is not authorized under § 56-15-350 to suspend a dealer's license merely for failure to deliver title within 45 days, especially when the fault lay with third parties. Rather the DMV must prove that the Dealership acted in a manner that was arbitrary, in bad faith, or unconscionable and that those actions caused damage to the parties.<sup>13</sup> Because the DMV found

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<sup>12</sup> This issue was raised by the Appellant at the Hearing (R. 15-18, 200) and ruled on by the Hearing Officer (R. 227).

<sup>13</sup> Under §56-15-350, a suspension may only be issued for a violation of Chapter 15 of Title 56.

§ 56-15-30 states in pertinent part:

(a) Unfair methods of competition and unfair or deceptive acts or practices as defined in Section 56-15-40 are hereby declared to be unlawful.

§56-15-40(1) states:

(1) It shall be deemed a violation of paragraph (a) of Section 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or motor

only a failure to deliver title within 45 days in its Sanctions Reports, it clearly exceeded its statutory authority in issuing a 7-day suspension. S.C. Code Ann. § 1-23-380(5).

The Hearing Officer recognized that S.C. Code Ann. § 56-19-370 allows a dealer to sell a car without the title in hand. (R. 224) The statute provides the dealership has 45 days to deliver the title. Bob Hogan testified he was told by the DMV on more than one occasion that they could sell a car before they had physical possession of the title. (R. 192-193) Therefore, it cannot be arbitrary, unconscionable, or in bad faith to sell a car without the title in hand. The DMV recognizes in DE-002 that dealers are not acting "willfully" (i.e., arbitrarily, unconscionably, or in bad faith) if previous owners or lenders do not follow the law and the Hearing Officer made this finding (R. 220).

The DMV has the burden of proof as to a violation of the Dealers Act. Agent Benjamin testified that he investigated the three complaints and found the titles were delivered late. (R. 99, 105) Benjamin did not testify that he found Appellant acted nonrationally, in bad faith, or with improper motive. In fact, he accepted Appellant's explanation that in all three cases title had not been delivered by a prior owner or lender. (R. 124) There is no evidence in the record that the DMV's decision to assess points against Appellant was based on anything other than a failure to deliver title within 45 days. The Court references the fact that the DLAU met with the dealership after two of the complaints had been received. However, there is no evidence that points were assessed in the third complaint because Appellant acted contrary to an instruction received from the DMV at that meeting. In fact, there is no Sanction Report at all for the third complaint (R. 497-502).

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vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.

## B. The Court Overlooks Appellant's Reasonable Basis for its Actions.

Motor vehicle dealers' conduct under the Dealers Act need only have some reasonable basis. *Taylor v. Nix*, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (1992). Although a decision is mistaken or wrong, it is not necessarily arbitrary.<sup>14</sup> See *Webb v. Dameron*, 219 S.W.2d 581, 585 (Tex. App., 1949) ("Action is not arbitrary or capricious when exercised honestly and upon due consideration, where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached." Internal citations omitted)

Appellant had a reasonable basis for its actions.<sup>15</sup> The Dealership had evidence that all loans had been satisfied before the cars were resold. (R. 137, 144, 161)<sup>16</sup> The lienholders were statutorily required to release the liens once the loans were paid. S.C. Code. Ann. § 56-19-680. The Dealership's vast experience with these situations indicated that the titles would be provided within 45 days.<sup>17</sup>

The Dealership took consistent action to follow up with the third-parties involved regarding the status of the titles. This Court incorrectly finds that the Dealership took no action until customers filed Complaints with the DMV. Toni Powell testified that if a lien had been paid off but not released with the DMV she called at least three times a week to check on the status. (R.

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<sup>14</sup> Although arbitrary conduct is not defined in the Dealers Act, our Supreme Court has defined it for purposes of the Act to include "acts which are unreasonable, capricious or nonrational; not done according to reason or judgment; depending on will alone." *Taylor v. Nix*, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (1992).

<sup>15</sup> *Freeman v. Hendrick Honda*, 414 S.C. 362, 778 S.E.2d 902 (2015) provides an example of when a dealership's actions were found to be arbitrary under the Dealers Act. Hendrick notified its customers that the closing fee it charged was a "means of reimbursing it for certain overhead costs . . ." but never calculated those costs. Therefore, the amount of its closing fee was arbitrary. Appellant, in contrast, was following its established procedures that had resulted in titles being obtained within the 45-day period over 25,000 times in the applicable time period.

<sup>16</sup> Mr. and Mrs. Derrick stated there was no lien on the vehicle at the time that they traded it in. (Respondent Ex. 3, R. 314-315)

<sup>17</sup> Appellant testified that title releases were normally received within 45 days after loans were paid. (R. 156) Duplicate titles in South Carolina could ordinarily be obtained by a customer in one day and from North Carolina within 20-30 days. (R. 167-169) The dealership's experience was that it could obtain duplicate titles within 45 days. (R. 175) In fact, titles were delivered by Appellant in over 25,000 transactions during the relevant time period. (R. 177)

139) She testified that she made numerous calls to Ford Motor Credit regarding the vehicle purchased by Gilliam. (R. 139-140) Gilliam's complaint was not received by the DMV until June 28<sup>th</sup> (R 476), the same day that Ford Credit issued its release letter (R.317). This indisputably demonstrates that the Dealership had been working to receive the Release prior to any complaint being filed. If the DMV's assessment of a 4-point violation for even one of the three complaints was improper, the 7-day suspension must be rescinded.

Powell also testified that she made numerous calls to Carolina Title Credit, at the branch that processed the payoff, regarding the vehicle purchased by Quality Auto. She started making the calls a few weeks after the loan was paid off and continued to pursue the release through a different branch when she did not receive a response. (R. 146-147)<sup>18</sup> Therefore, it is clear error to conclude that Appellant did nothing until the complaints were filed.

Michelle Taylor testified that she similarly made calls every two to three days to Mr. Gorman regarding the title for the vehicle purchased by McCallister. (R. 161-162) Appellant received the lien release letter from Chase bank on April 12<sup>th</sup> (R. 323) and immediately began processing the paperwork in North Carolina. McCallister's complaint was dated April 26<sup>th</sup> (R.498). As soon as the Dealership received the lien releases it processed the paperwork to transfer the titles. (Quality Auto R. 147, Gilliam R. 141, McCallister R. 165-167) None of these actions were unreasonable, capricious, or nonrational.

### **C. Appellant's Actions were not Made in Bad Faith**

Bad faith is "[t]he opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another, or a neglect or refusal to fulfill some

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<sup>18</sup> The Hearing Officer misstated the testimony of Toyota of Greer's Toni Powell regarding the sale to Quality Auto. Ms. Powell did know the branch where the title was held. She testified that she contacted the Greer branch and received the payoff information. (R. 144) She further testified that she sent the payoff check to the same branch and the check was cashed by Carolina Title Loan. (R. 144) It was not until after the Chrysler 300 was sold to Quality Auto (for \$300) that it became known that the branch which had originally held the title had closed. (R. 145-146)

duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.” *State v. Griffin*, 100 S.C. 331, 331, 84 S.E. 876, 877 (1915) (citation omitted).

The Court erred in finding Appellant acted in a sinister manner. Prior to the sale to Gilliam, Ford Motor Credit confirmed the seller’s representation (R. 314) that the loan was satisfied 4 years earlier and the lien release would be sent to the dealership. (R. 137, ll. 2-11, 13-16) Appellant had two separate sources to rely upon. It was, therefore, not sinister for Appellant to inform Ms. Gilliam that there were no encumbrances on the Explorer. The previous owner of the Mazda also confirmed there were no outstanding liens prior to the sale to McCallister. (R. 161, l. 8-10)

Appellant knew the loan on the Chrysler 300 with Carolina Title Loan was satisfied because it paid the loan before taking the car to the auction. (R. 144) The fact that there was no title with the Chrysler was fully disclosed. The Auction invoice announced to all potential purchasers that the title was not available at the time of sale. (R. 309) The Bill of Sale provided to Quality Auto by the Auction (R. 465) did not contradict this disclosure. The Bill of Sale indicated only whether there were liens in the Buyer’s name (R. 465) and the Court erred in finding that the document was false or deceptive.<sup>19</sup>

Appellant trusted Ford Motor Credit, Carolina Title Loans, and Mr. Gorman to provide the title or releases within the required period. If that trust was misplaced, it was an honest mistake

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<sup>19</sup> The Hearing Officer improperly found that the Bill of Sale was prepared and signed by a representative of the Toyota of Greer. (R. 216) Toni Powell testified that Toyota of Greer does not use a form like the one on page 7 of Petitioner’s Exhibit 7. (R. 148) Ms. Powell further testified that the signature on the Bill of Sale did not belong to any employee of Toyota of Greer. (R.148) It obviously was signed by the Auction.

and not the result of a sinister motive. There is insufficient evidence to support a finding of bad faith.<sup>20</sup>

#### **D. Appellant's Actions were not Unconscionable**

South Carolina Courts have defined unconscionability as the absence of meaningful choice on the part of one party due to one-sided contract provisions together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Hardee v. Hardee*, 355 S.C. 382, 585 S.E.2d 501 (2003). Unconscionability clearly requires more than mere negligence.

The dictionary defines "unconscionable" as "excessive;" "exorbitant;" "lying outside the limits of what is reasonable or acceptable;" "shockingly unfair, harsh, or unjust;" or "outrageous." Webster's Third New International Dictionary 2486 (1993) The Third Circuit has recognized the "extremely limited scope of the concept of unconscionability." *Matthews v. Pineo*, 19 F.3d 121, 124 (3rd Cir., 1994). In addressing an option presented to a debtor in bankruptcy, the Third Circuit found "[a]n option is not 'unconscionable' simply because it may be disruptive, unpleasant, undesirable, or painful. Instead, to be 'unconscionable' an option must be 'shockingly unfair, harsh, or unjust' or 'outrageous'" *Id.*

The evidence in the present case shows only that despite the consistent efforts of Appellant to obtain title to the vehicles, it took more than 45 days for third parties to provide the required lien releases. As soon as Appellant received the required documents, it provided the titles. The evidence presented by the DMV simply does not rise to the level of unconscionability.<sup>21</sup>

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<sup>20</sup> Compare *Brown v. Dick Smith Nissan, Inc.*, 414 S.C. 101, 777 S.E.2d 208 (2015) (Dick Smith intentionally financed the wrong car in Brown's name, accepted the money from the lender, refused to take steps to correct the problem, and allowed the car Brown had purchased to be repossessed.)

<sup>21</sup> Compare, *Halbersberg v. Berry*, 302 S.C. 97, 394 S.E.2d 7 (Ct. App. 1990) (finding sufficient evidence of unconscionability where after Halbersberg and Berry agreed to the terms of a partnership and Halbersberg paid \$10,000 toward the construction cost of a building. Berry executed a lease in his name alone without consulting

### E. The DMV Failed to Meet its Burden of Proof as to Damages

The DMV has the burden of proof and did not present evidence that the three customers suffered damages as a result of the Appellant's actions. OMVH Rule 15(b). The DMV did not present testimony by Gilliam or McCallister that they suffered any damages or that they even ceased driving the cars in question.<sup>22</sup>

Although Mr. Bocook testified generally that Quality Auto sold the car at a loss, there is no evidence in the record showing that Quality Auto suffered a loss. The evidence placed in the record by the DMV shows only that a James Rice subsequently paid \$870 for the car, which is more than twice what Quality Auto paid. (R. 460-461)

The Court erred in failing to consider the fact that Quality Auto had an opportunity to return the Chrysler 300 to the auction and chose not to do so. This Court is distressed that Appellant would suggest that Quality Auto could have simply returned the car, but this fact is relevant to an analysis of whether the Dealers Act was violated. Quality Auto is a merchant in the business of buying and selling cars. It purchased the Chrysler 300 in an arms-length transaction at auction with "Title Attached," meaning it was aware that the title was not available and that the car could be returned if title wasn't received within 30 days. (R. 31, ll. 2-23; R. 33, ll. 1-17) Quality Auto chose not to return the car but to wait for the title instead. (R. 33, ll. 23-25).

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Halbersberg, completed the building, exercised exclusive control of the building, and collected rents which were not shared with Halbersberg.); *DeBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000) (finding a jury could infer Carlton enticed deBondt to purchase an SLK automobile based on the promise she would be a Charter Owner and then made the decision to place the SLK order as a stock order rather than as a customer specific order, knowing she would not be a Charter Owner as a result.)

<sup>22</sup> Appellant's counsel objected to the complaint forms as hearsay in an ongoing objection which was renewed for each Exhibit. The Hearing Officer agreed that hearsay statements contained within those exhibits would not be admitted or considered. (R. 97-99, 106, 111)

### **III. THE COURT'S ORDER IS CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD**

The Court made the following unsupported findings:

1. The Court found three complaints were filed with the DMV in 10 months when it was 11 months.
2. The Court incorrectly found that the Dealership took no action until customers filed Complaints with the DMV.
3. The Court incorrectly found that the Bill of Sale provided to Quality Auto contained false statements.
4. The Court incorrectly found that Leaks' manager reviewed all sanctions when the evidence shows only that she consulted him on a single complaint.
5. The Court erred in finding the Appellant failed to perform "its most fundamental duty owed to its customers" when the failures in all instances were due to "a prior seller or lienholder who has failed to deliver title as required by law."
6. The Court erred when it found that Scott Bocoock alleged that he purchased a vehicle, when it was Quality Auto of Anderson that purchased the vehicle. (R. 457)
7. The Court erred in saying that Appellant said the fault was with Quality Auto for not returning the car to the auction when it said that an experienced dealer knew the auction procedures and had the option available to return the car to the auction to avoid damages.
8. The Court erred in holding the Appellant had no idea whether there was a lien on the McCallister car when the seller had reported there was no lien, which was confirmed by the prior lender.
9. The Court erred in holding that Appellant sold the Gilliam car "with knowledge of a lien" when in fact the seller said there was no lien and Ford Motor Credit said there was no lien. Ford Motor Credit simply failed to provide the paperwork showing the lien was satisfied four years earlier.
10. The Court erred in finding the DMV issued its suspension based on SCDMV Procedure DE-002, Section III.G.4 when the DMV admitted it did not follow the Procedure.
11. The Court erred in holding there is no authority for a dealer to exceed 45 days to deliver title when DE-002 states that there is no violation unless the failure was "willful."
12. The Court erred in holding the only limitations on the DMV's discretion regarding sanctions are contained in S.C. Code Ann. § 56-15-350 when the Department established DE-002 and required that it be followed.

The Court should reconsider its Order and rescind the 7-day license suspension.

## CONCLUSION

This Court is Appellant's last hope to check the unilateral action of the administrative state. The Order would allow the DMV to arbitrarily disregard the binding norms in DE-002 and act as an unchecked administrative state, taking away the substantial rights of Appellant. Agent Benjamin admitted that he substituted his own definition of "willfulness" for that of DE-002 and Zenda Leaks admitted that she created her own sanction categories not contained in the Procedure.

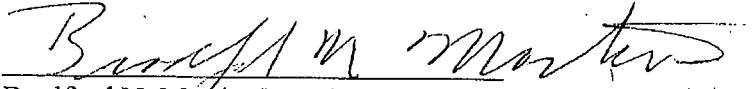
The evidence in the Record shows that the DMV's investigation revealed only a failure to deliver title within 45 days. The DMV chose the 4-point violation and not the violation for "damage to any party or the public" that must start at 6 points. The DMV admitted that it was required to make a finding of willfulness in order to assess the 4 points and that its own definition of willfulness was not met. There is no evidence that the DMV Manager performed a review prior to the issuance of an Official Order of Suspension.

No evidence was presented at the hearing that the DMV's investigation found the dealership's actions were arbitrary, in bad faith, or unconscionable. The testimony of Jason Benjamin and Zenda Leaks showed that the DMV acted arbitrarily and abused its discretion in disregarding the binding norms of DE-002 by ignoring the findings in its own Sanction Reports, ignoring the "willfulness" requirement for a 4-point violation, creating a new hybrid sanction category not contained on the grid, and eschewing managerial review.

Appellant raised the issues at trial of the DMV's failure to follow its established procedure and failure to prove a violation of the Dealer's Act. The Hearing Officer ruled on these issues, first correctly finding that the 4-point violation required proof of willfulness and then erroneously ruling that the DMV was not required to follow its established procedure. The Hearing Officer also erroneously found that Appellant acted arbitrarily. This finding was based in part on the erroneous factual findings that the dealership presented false documents to customers.

For these reasons the Court should reconsider/rehear its Order and rescind the 7-day suspension of Toyota of Greer's license in order to avoid the consequences of an unchecked administrative state.

August 10, 2018



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**ATTORNEYS FOR TOYOTA OF GREER**

**THE STATE OF SOUTH CAROLINA**  
**In the Administrative Law Court**

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APPEAL FROM THE DEPARTMENT OF MOTOR VEHICLES  
Docket No. 18-ALJ-21-0011-AP

Toyota of Greer ..... Appellant,

v.

South Carolina Department of Motor Vehicles ..... Respondent.

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**PROOF OF SERVICE**

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I, Peggy McComb, Legal Assistant at Bradford Neal Martin & Associates, PA, hereby certify that due and proper service of the document(s) affixed hereto and described below was made by depositing a true copy(ies) of same in the United States Mail at Greenville, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon.

**DOCUMENTS:**                    **Toyota of Greer's Motion for Reconsideration/Rehearing**

**COUNSEL/PARTY SERVED:**

Philip S. Porter, Esq.  
S.C. Department of Motor Vehicles  
P.O. Box 1498  
Blythewood, SC 29016

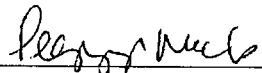
Frank L. Valenta, Esq.  
Office of General Counsel  
S.C. Department of Motor Vehicles  
P.O. Box 1498  
Blythewood, SC 29016

**FILED**

AUG 10 2018

SC ADMIN. LAW COURT

Date: August 10, 2018

  
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Peggy McComb

THE STATE OF SOUTH CAROLINA  
In the Administrative Law Court

APPEAL FROM THE DEPARTMENT OF MOTOR VEHICLES  
Docket No. 18-ALJ-21-0011-AP

Toyota of Greer ..... Appellant,

v.

South Carolina Department of Motor Vehicles ..... Respondent.

CERTIFICATE OF DATE OF MAILING

I, Renique Robinson, Legal Assistant at Bradford Neal Martin & Associates, PA, hereby certify that due and proper service of the document(s) affixed hereto and described below was made by depositing a true copy(ies) of same in the United States Mail at Greenville, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon.

DOCUMENTS: Toyota of Greer's Motion for Reconsideration/Rehearing

COUNSEL/PARTY SERVED:

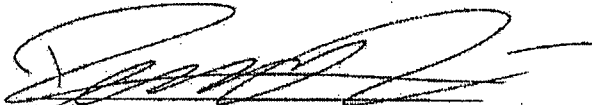
The Hon. Deborah Brooks Durden  
Administrative Law Judge  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton Street  
Suite 224  
Columbia, SC 29201

**FILED**

AUG 10 2018

SC ADMIN. LAW COURT

Date: 8/10/2018



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NOTARY PUBLIC FOR SOUTH  
CAROLINA

Shana L. Henderson

Shana L. Henderson

My Commission Expires: 10/25/2020

Date: 8/10/2018

[SEAL]

SHANA HENDERSON  
Notary Public, State of South Carolina  
My Commission Expires 10/25/2020

IN THE STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Toyota of Greer,

Docket No. 18-ALJ-21-0011-AP

Appellant,

v.

**THE RETURN OF THE S.C. DEP'T.  
OF MOTOR VEHICLES  
TO APPELLANT'S MOTION FOR  
RECONSIDERATION**

South Carolina Department of Motor Vehicles,

Respondent.

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Appellant seeks reconsideration alleging numerous grounds. For purposes of keeping the responses manageable, the responses will be grouped into the major themes of Appellant's assertions. The remaining allegations not addressed are immaterial, irrelevant or lack merit.

- I. **Appellant's insistence that the Department could not rely on the ground that it disclosed in the notice of suspension, "Engaging in any action which causes damage to any party or the public" in the form of three instances of failure to title a vehicle within a period of twice the legally allowable period.**

The Department in its Notice of Suspension informed the Appellant that the provisions of law which supported the suspension including *S.C. Code Ann.* §§ 56-15-30, -40, -350, -19-210, -240, -360 and -370. The DE-002 Performance Sanction Table Grid at R. 448 lists § 56-15-350 (b) as a sanction authority, and § 56-15-40 (1) as dealer chapter violation. In fact, there was only enough space for a single section reference for dealer chapter violation, but clearly § 56-15-30 is likewise a dealer chapter violation as referenced in § 56-15-350 (b). Nevertheless, Appellant has taken the fallback position,<sup>1</sup> that the Department is held to prove the standard of Section 56-15-40

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<sup>1</sup> Its primary position discussed below is that despite the Department having given notice that it was relying on "engaging in any action which causes damage to any party or the public" in the form of extended illegal failure to provide title, the Department was somehow bound to proceed under "willful failure to deliver title" as described at R. 449, because it specifically mentioned failure to deliver title. The argument is more fully discussed below.

(1), specifically a standard of conduct which is “arbitrary, in bad faith or unconscionable and which causes damage to any of the parties or to the public.” The Department adequately noticed Appellant that it is alleging violations of Section 56-15-30 and 56-15-40 (1).

**A. Section 56-15-40 (1)**

This section deems dealer behavior which is arbitrary, in bad faith or unconscionable to be unfair or deceptive and a violation of the Dealers Act. It has been adequately covered in arguments in Respondent’s Brief and correctly ruled on by the Hearing Officer and this Court. Based on the evidence of record the Hearing Officer reasonably found that the Appellant’s actions met at least the “arbitrary” element. The Appellant or persons entrusted to sell a vehicle for Appellant issued misleading sales documents indicating there were no existing liens when in fact there were still liens of record. Having received those documents, buyers purchased the vehicles entitled to the legal presumption that by purchasing from a licensed dealer they would get a clear title or at least a title encumbered only by liens of their own making. They did not get their titles in the statutorily permitted period. The delay was not for only a week nor even a month, but in each case they did not receive titles until a time past more than double the legally allowable deadline, and only after complaints were filed. Beyond forty-five days after the sales, the buyers were unable to operate the vehicles legally or sell them. The record shows that Appellant was repeatedly warned by the Department that failure to deliver title could end up in a suspension sanction.

Even if Appellant’s claims that other parties were initially to blame for the inability to provide title are fully credited, there is no evidence in the record that Appellant sought to mitigate the problems by offering loaner cars or offers to buy back the vehicles. It was the buyer’s problems to deal with. These acts meet the standard of “unreasonable, capricious or nonrational, not done

according to reason or judgment, depending on will alone.” *Brown v. Dick Smith Nissan, Inc.*, 414 S.C. 101, 105,-06, 777 S.E.2d 208, 210-11 (2015). These acts violate established law and show a neglect of a legal duty to customers. These acts are at the very least arbitrary. The Hearing Officer could also have reasonably found these acts to have been violative of the unconscionable or bad faith elements as set forth in the Department’s Brief as well.

Appellant argues that the Department did not adequately prove damages. The Department has no standing to go to court to sue for damages for aggrieved customers. It has no ability to evaluate in dollars and cents the harm done from failure to title. Appellant is essentially arguing, in this and other arguments, that there is no scenario in which the Department could take action on such violations because it has not met a standard of proof it is not able to pursue.

The Hearing Officer found, and was justified in finding, that by the Appellant’s failure to title for a period of time more than double the legally allowable period, during most of which the buyers were unable to legally operate their vehicles or sell them, those customers were “damaged.”

#### **B. Section 56-15-30**

Appellant insists that the Department’s sanction could only be applied, if at all, by proof of violation of Section 56-15-40 (1) and the “arbitrary, in bad faith or unconscionable” standard. That is not correct. The Department’s Official Notice of Dealer’s License Suspension dated June 27, 2017 lists Section 56-15-30. Even the Sanctions Points grid on which the Appellant relies lists Section 56-15-350 (b) (“violating any provision of this chapter”) R.449. Section 56-15-30 is a provision of the chapter.

While a number of reported cases have analyzed Section 56-15-40 (1) in connection with violations of Section 56-15-30, no case has suggested that proof of the “arbitrary, in bad faith or unconscionable” standard is required for proof of a violation of Section 56-15-30. Properly read,

the “arbitrary, in bad faith or unconscionable” standards stated in Section 56-15-40 (1) are simply examples of acts that would qualify as particular unfair or deceptive acts or practices. As the headnote to Section 56-15-40 states, “arbitrary, in bad faith or unconscionable” acts are merely specific acts that are deemed to be unfair methods of competition or unfair or deceptive acts.

Many jurisdictions have found specifically that illegal failure to deliver title or breach of warranty of title is in and of itself a failure to perform a legal duty and violative of those States’ versions of the Unfair Trade Practices Acts. See discussion in the Department’s Brief at pages 23 through 25. Moreover, in the present case, the “capable of repetition” standard was met because the failure to title was in fact repeated.

Sister States such as North Carolina have regarded *any* violation of a statute that is intended to protect the public (which the titling requirements of Chapter 19 of Title 56 undoubtably are) are likewise violations of those states’ versions of Unfair Trade Practices Acts. *Winston Realty Company, Inc. v. G.H.G., Inc.*, 314 N. C. 90, 331 S.E. 2d 677 (1985). No reported cases so holds in South Carolina at present, although South Carolina clearly recognizes acts that are offensive to public policy as violative of its Unfair Trade Practices Act. *DeBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 270, 536 S.E. 2d 399, 407 (2000). In any case, the combination of factors discussed above, including violation of titling statutes; misleading documentation [it is only necessary to prove there is a capacity to deceive, not that there was an intention to do so. *Inman v. Ken Hyatt Chrysler Plymouth, Inc.*, 294 S.C. 240, 243, 363 S.E. 2d 691, 692 (1988)], neglect of a legal duty, and extended failure to title without apparent offers of mitigation all combine to make Appellant’s actions unfair or deceptive.

The Hearing Officer could have properly upheld the suspension without regard to the Section 56-15-40 (1) “arbitrary, in bad faith or unconscionable” standard.

## II. Willfulness Standard

Appellant strenuously insists that even though the Department's Official Notice of Dealer's License Suspension dated June 27, 2017 alleged that the violations were "[e]ngaging in any action which causes damage to any party or the public," because another category on the Sanctions Table mentions failure to deliver title (R. 449), the Department has no choice but to proceed under it and be held to a willfulness standard. The Appellant's final logical pole vault is that willfulness cannot be proven because someone else was allegedly to blame and the Department recognized it.

The predicate assumption, that the Department must proceed only under a willful failure to deliver, is itself wrong on several levels. The first of which is the term 'willful failure to deliver title' is defined as "the failure of a dealer to execute an assignment of title to the buyer and deliver the title to the buyer or the department within 45 days of the date of sale *when the prior seller or lien holder has delivered the title as required by law*" (emphasis added) (R. 439). This is not the situation with any of the complaints set forth in the notice, two of which stemmed from alleged lack of cooperation from the lienholder and one of which stemmed from Appellant not even knowing the identity of its seller before the vehicle was resold.

Even if this were not so, nothing relieves Appellant of its fundamental duty to provide title. While it is true as Appellant alleges that dealers commonly sell vehicles without title in hand (primarily when they are sold in deals which require a payoff of the prior owner's lien) the dealer is ultimately responsible for providing title. Regardless of the fault or lack of fault of the dealer, when the dealer fails to title within forty-five days, the dealer has violated the law. The dealer knows or should know this risk with every in which it does not have the title available. In tort law the violation of a statute, while not conclusively proving willfulness, is some evidence that the

party acted recklessly, willfully or wantonly. *Wise v. Broadway*, 315 S.C. 272, 276, 277, 433 S.E. 2d 857, 859 (1993). Even if initially some other person has some responsibility for the difficulty, once the failure to deliver has lasted more than twice the legally allowable period, which occurred in each of the noticed complaints, that is evidence of willfulness and neglect of a legal duty. The record shows no title was delivered until after complaints had been filed with the Department. The record shows no effort to mitigate the problem of lack of title by a buyback or otherwise.

Even if willfulness were the standard, the record adequately supports such a finding.

**III. DE-002 is not a regulation nor is the Department's action invalidated because it was not promulgated as a regulation.**

A review of the cases cited by Appellant in its Motion shows no support for finding that the procedure had the effect of a regulation or of a "binding norm" for which an agency could be found to have wrongly failed to promulgate as a regulation.

Appellant cites *Joseph v. S.C. Dep't. of Labor*, 417 S.C. 436, 790 S.E. 2d 763 (2016) for the proposition that the Board of Physical Therapy created a binding norm that it was required to follow and that it violated the APA by adopting the Position Statement without promulgating it as a regulation. The reason the Supreme Court found the Position Statement to be a binding norm was because the Chairlady of that Board had presented the Position Statement to the Board in letter form, and the governing board itself voted to adopt the position stated in her letter on August 17, 2011 [at 445, 790 S.E. 2d at 768]. The gist of the Position Statement as interpreted by the Court was "merely . . . anti-competitive protectionist legislation intended to protect personal financial interests . . . rather than actual benefits to patients" and the Position Statement was intended to protect PTs and PT Groups and specifically "was intended to have the force of law" [at 452, 453, 417 S.E. 2d at 771, 772]. In fact the reversal was justified by the Court's finding of an equal protection violation alone.

DE-002, on the other hand, makes no claim on having the force of law, filling in gaps in the law nor even *interpreting* any law. It merely provides guidance for Dealer Licensing and Audit personnel in how to go about imposing sanctions specifically referred to in the law for certain specific violations.

Further evidence that DE-002 is not a regulation or a binding norm for which promulgation of a regulation is found in *Home Health Services, Inc. v. South Carolina Tax Commission*, 312 S.C. 324, 440 S.E. 2d 375 (1994). In that case, the Tax Commission charged a bingo operation with a violation of the bingo statutes at *S.C. Code Ann.* §§ 12-21-3320 (16) and -3410 (1), (4) and (5) based on the Commission's interpretation of those statutes to prohibit the bingo establishment employees from covering squares on behalf of players who had temporarily left the game. The bingo establishment appealed, claiming in part that the Commission's interpretation of the law had given it no notice of the illegality and because the Commission had improperly failed to promulgate its determination as a regulation in violation of the Administrative Procedures Act. The Supreme Court rejected these positions.

As a preliminary matter it should be noted that in the *Home Health Services* case, the appellant there at least had an opportunity to argue that the Commission's interpretation was legally incorrect or its enforcement beyond the authority of the Commission. No such issue is genuinely presented with DE-002, which makes no claim to expand, fill in the gaps of or even interpret the statutes that impact on dealer sanctions. It merely sets up an internal framework to guide the Department in enforcing sanctions.

In any case, in *Home Health Services* Justice Finney rejected the bingo establishment's claim that the APA required promulgation of the Commission's interpretation as a regulation:

Whether a particular agency proceeding announces a rule or a general policy statement depends upon whether the agency action establishes a binding norm. In

our view, the document issued was similar to a policy statement as opposed to a binding norm given that the document was not issued by the commissioners and thus, no final agency approval had been given. Therefore, we do not find that the APA was violated in this instance.

At 328, 440 S.E. 2d at 378 (citation omitted).

As with the Commission in *Home Health Services*, in the present case the chief executive authority of the agency did not give final agency approval of DE-002. *See S. C. Code Ann.* §56-1-5 (C), (D) and (E). As with *Home Health Services* (at 328, 440 S.E. 2d at 378) subordinates including a deputy made the position into an internal memorandum but did not promulgate a regulation but circulated the memorandum to applicable staff. *Id.* As with the present case, the appellants in *Home Health Services* sought to invalidate the Commission's action with the claim that the Commission had failed to follow its own procedures (at 329, 440 S.E.2d at 378). This allegation was rejected by the Court's finding that neither the Commission procedures, nor by extension its revenue regulations mandated the issuance of guidelines.

Appellant likewise cites two 1980s INS cases, *Moret v. Karn*, 746 F. 2d 989 (3<sup>rd</sup> Cir. 1984) (Motion at 4) and *Piper v. Crosland*, 519 F. Supp. 962 (E.D. N.Y. 1981) (Motion at 5) for the proposition that the Department cannot depart from its procedures. They likewise are unavailing to the Appellant. Under the Federal Administrative Procedures Act definitional section, 5 U.S.C. § 551 defines a "rule" as follows:

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to *implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency* and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;  
*(emphasis added)*

The Federal definition of "rule" has a comparatively broad scope, which is a main reason for the extent of Federal regulations generally and the pervasiveness of regulatory part of the Federal

Government. As was stated by Mr. Justice Blackmun in *Morton v. Ruiz*, 415 U.S. 199 (1974), a case cited in *Piper v. Crosland* by the Appellant:

[The Federal APA] states in pertinent part: 'Each Agency shall separately state and currently publish in the Federal Register for the guidance of the public—  
(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.' 5 U.S.C. s 552(a)(1).

The sanction added in 1967 by Pub.L. 90—23, 81 Stat. 54, provides: 'Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published.'

415 U.S. at 232-33

The South Carolina Administrative Procedures Act, *S.C. Code Ann.* § 1-23-10 (4)

defines a "regulation" somewhat differently:

"Regulation" means each agency statement of *general public applicability* that implements or prescribes law or policy or practice requirements of any agency. *Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law.* The term "regulation" includes general licensing criteria and conditions and the amendment or repeal of a prior regulation, *but does not include descriptions of agency procedures applicable only to agency personnel; . . . advisory opinions of agencies;* and other agency actions relating only to specified individuals.

Emphasis added (Supp. 2017)

Clearly, the South Carolina General Assembly contemplated not just procedural but also policy statements as lying outside the definition of "regulation," even though under the Federal law such statement might be required to be published in the Federal Register for public comment. In fact, it is noteworthy that although the South Carolina version of the APA is not regarded as a jurisdiction where the full Revised 1961 Model Act was adopted [15 U.L.A. Model State Administrative Procedures Act, Revised 1961 Act (West 2000) at 174; Cum. Pocket Part (2018) at 102] the first sentence of Section 1 of the Uniform Act is identical to the first sentence of S.C.

*Code Ann.* § 1-23-10 (4) except for changing the term “rule” to “regulation.” Nevertheless the second sentence of subsection (4) in italics quoted above is a non-uniform South Carolina addition, which has not changed since its enactment in 1977. Clearly this was an effort on the part of the General Assembly to avoid having policies or internal directives go through the full process of comment period, promulgation and legislative approval. In addition, a review of Chapter 15 of Title 56 of the South Carolina Code of Laws shows there is not legislative authorization for the Department to promulgate regulations under it, or under the Title generally.

In addition, *S.C. Code Ann.* § 56-15-350 expresses no statutory limitation on the Department’s discretion to cancel, deny, suspend or revoke a dealer license based on the violations that are listed in that section. DE-002 does not seek to interpret the underlying statutory violations in any way. Dealers against whom the Department seeks sanctions remain as free as ever to show that the allegations do not actually constitute violations of law in a contested case hearing, subject to appeal. In essence, the only party that DE-002 could be said to be “binding” on is the Department, in essence *descriptions of agency procedures applicable only to agency personnel* as quoted above. In this, the Appellant’s criticism has it backward. DE-002’s only effect on Appellant was to make it more difficult on the Department for the Department to sanction the Appellant. Appellant has not been prejudiced by it, nor deprived of any opportunity to contest the sanction, nor is there any evidence that the Appellant even was familiar with DE-002 other than by complaints and Departmental warning letters explaining that the accumulation of points could lead to sanctions.

Nor is it availing to Appellant to assert, as it seems to, that DE-002 is a “binding norm” simply *because* it is expressed as mandatory on Departmental employees.

As an example, imagine that a Deputy of the Department in charge of the call center were to adopt a procedure restricting the use of the telephones for personal calls because of the need to keep the lines open to respond to citizens' calls. Imagine further that the Department adopted a policy that employees who have access to the Department's "Phoenix" system could not make entries nor even view records concerning themselves, even though it would not in itself break any law, in order to prevent frauds and unauthorized alteration of records. Imagine these policies imposed discipline for excessive personal use or viewing personal records. Would those employees, when discipline was imposed for violating the policies, have a complaint that the policies were invalid because the Department had failed to promulgate the policies as a regulation? Such would be an absurdity. These are actual policies of the Department, incidentally, which Appellant appears to believe are invalid because they are not approved by the General Assembly.

In *Service Employees Intern. Local 6 v. Idaho Dep't. of Health and Welfare*, 106 Idaho 756, 683 P. 2d 404 (1984), the Department's revenues were reduced due to recessionary budget cutbacks, and the Department implemented a policy manual of internal layoffs and reclassifications based on a system of "retention points." The policy was susceptible to be altered or rescinded at any time since it ostensibly was aimed at a temporary shortfall. Impacted employees sued in a purported class action with one member alleging, among other things, the demotions violated agency regulations. In construing the particular employee's challenge the Court analyzed I.C. § 67-5201 (7) definition of "rule" which reads:

(7) 'rule' means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedure, practice requirements of any agency. The term ... does not include (A) statements *concerning only the internal management of any agency and not affecting private rights or procedures available to the public....* (Emphasis added.)

At 758-59, 683 P. 2d at 406, 407.

The Court went on to hold that since the manual was not promulgated as a rule under the Iowa APA, it could not be deemed binding on the agency, and even if arguably the agency had not correctly followed all requirements of its policy, there was no remedy available for the plaintiff. Since the policy was not a rule, the Court held “[n]ot being a ‘rule,’ the procedures and policies manual provides only guidelines for the internal management of the Department ‘not affecting private rights or procedures available to the public.’” *Id.* at 759, 683 P. 2d at 407. While Appellant in the present case argues repeatedly that it is somehow aggrieved by DE-002, in fact it is only aimed to the actions of the Department, no part of it purports to extend or interpret law, the Appellant had full opportunity to contest the application of the law to it, and the only direct effect on Appellant was to make it procedurally more difficult to sanction a dealer than in its absence, and in essence benefit Appellant by making suspension harder than relying in the statutes alone.

A final point on *Service Employees* must be noted. The term “practice requirements” as used in *I.C.* § 67-5201 (7), above, and by extension the same term as used in *S.C. Code Ann.* § 1-23-10 (4), cannot be deemed to refer to the general practices of the agency as Appellant apparently presumes in the present case. That would cause the subsequent exclusion concerning the *internal management of any agency* contradictory. What is contemplated is practice before the agency and matters such as rules for the conduct of contested cases. See discussion regarding *Eagle Hill Corp.* below.

It is likewise unavailing to assert that because the procedure governing only Departmental actions are somehow transformed into “regulations” just because they have a tangential impact on the interests of third parties.

In *In the Interests of Doe*, 9 Haw. App. 406, 844 P. 2d 679 (1997), a minor was ticketed for driving under the influence and other violations. He defended by asserting that the field sobriety

testing policy followed to determine probable cause for the arrest was by its nature a rule under the Hawaii APA, and since the police department had failed to promulgate the policy as a rule, evidence from the test and evidence gained as a result of the test should be stricken. As is true with the current case, the field sobriety procedure was one adopted by the agency in *Doe*. As with the present case, the administration of the procedure had at least the potential to impact the minor's interests by the possibility it would lead to a conviction for DUI. As with the current case, the minor had a full opportunity to exercise his due process rights and contest the legality of the arrest. As is true in the present case, the Hawaii APA contained essentially the same terminology as the first sentence of 1-23-10 (4) and 1961 Revised Model Act Section 1, and used the following terminology:

(4) "Rule" means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda.

\* \* \* \* \*

*HRS § 91-1* (1985)

Emphasis added, *Doe* at 410, 884 P. 2d at 681.

The procedure was held not to be a rule for which promulgation was necessary, and the field sobriety evidence was ruled to be admissible.

In *Eagle Hill Corp. v. Commission on Hospitals and Health Care*, 2 Conn. App. 68, 477 A. 2d 660 (1984), the Commission was administered the State payment for construction of health care facilities, including the alcohol treatment facility in question in the case. The Commission had approved certain payments and Eagle Hill sought its approval for additional funds for cost overruns which were refused because the company allegedly had failed to meet an application

deadline and had allegedly failed to adequately control costs. On the initial appeal of the Commission's refusal, the Court found that the refusal was in effect an application of a *per se* rule in violation of Connecticut's APA rulemaking provisions. On appeal, the Appellant Court of Connecticut agreed with the Commission that its decision did not constitute a regulation. The Court held that "the test is, rather, whether 'a rule has a substantial impact on the rights and obligations of parties who may appear before the agency in the future.'" under the Connecticut APA. The Court went on to state:

This does not mean, however, that every administrative decision which may have precedential significance beyond the facts and party before it becomes ipso facto a regulation. Like courts, "administrative agencies must necessarily interpret statutes which are made for their guidance. To rule otherwise would be to ignore the subtle and intricate interaction of law and fact. It is inherent in our judicial system of dispute resolution that the interpretation of statutes, like the development of the common law, grows out of the filtering of a set of facts through the law, as seen by the administrator or judge."

At 76, 477 A. 2d at 665, citations omitted.

As a corollary to *Service Employees* and *Eagle Hill*, it should be noted that in the strictest sense, the Department is not even capable of making a regulation that impacts Appellant's rights regarding practice requirements or impacting the "rights and obligations of parties who may appear before the agency in the future" because the Department is not that agency. The Office of Motor Vehicle Hearings is. The OMVH has its own rules for practice before it and it gave Appellant a full and fair opportunity to defend.

In *Tyska by Tyska v. Board of Education Township High School District 214 Cook County*, 73 Ill. Dec. 209, 453 N.E. 2d 1344 (1983), the Board was dealing with a problem of reduced revenues and lagging attendance at high schools in an area, requiring consideration of closing certain of the schools. At public hearings the Board formulated committees and requested the committees to formulate criteria to help determine which among the schools might be closed and

the students reassigned. Allegedly the Board made it appear to the public that if it closed schools at all, it would do so by strict adherence to the criteria developed. When one school was closed without strict adherence to the criteria, certain students and a non-profit sued, alleging among other things the criteria developed had become a rule by which the board was bound. The lower court agreed and held that the board was bound to either follow the criteria or give written findings of why it did not. The Appellant Court of Illinois disagreed, holding that not every interpretation is a rule. The Court held that Rules that were actually binding on the Board had to be filed and approved under the Illinois APA and the criteria had not. It further held that the Board was not authorized to delegate its responsibility to make decisions such as school closing. The Court held that "since the criteria were not a rule or mandate to be strictly followed, we find upon a review of the record that the Board retained its full discretionary powers." at 217, 453 N.E. 2d at 1352.

Finally, since the South Carolina APA is at least in part derivative of the 1961 Model Act, it is beneficial to consider how the definition of "rule" is treated in the most recent iteration of the Model APA, which is the Revised Model State Administrative Procedure Act (2010), at Section 102 (30):

(30) "Rule" means the whole or a part of an agency statement of general applicability that implements, interprets, or prescribes law or policy or the organization, procedure, or practice requirements of an agency and *has the force of law*. The term includes the amendment or repeal of an existing rule. The term does *not* include:

(A) a statement that concerns *only the internal management of an agency and which does not affect private rights or procedures available to the public*;

(B) *an intergovernmental or interagency memorandum, directive, or communication that does not affect private rights or procedures available to the public*;

(C) an opinion of the Attorney General;

(D) a statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections, settling commercial disputes, negotiating commercial arrangements, or defending, prosecuting, or settling cases, if disclosure of the criteria or guidelines

would enable persons violating the law to avoid detection, facilitate disregard of requirements imposed by law, or give an improper advantage to persons that are in an adverse position to the state;  
(E) a form developed by an agency to implement or interpret agency law or policy; or  
(F) a *guidance document*.

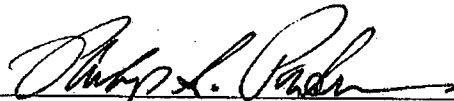
15 U.L.A. (West 2000) 2018 Pocket Part at 9, 10.

Thus a review of the South Carolina definition of "regulation" as well as the various state constructions of their own Administrative Procedures Acts based on the model act and the most recent amendments to the Uniform Administrative Procedures Act show that the result Appellant seeks, either treatment of an internal procedure as a binding regulation, was not intended by the General Assembly nor by the Uniform Code Commissioners in either the 1961 or 2010 drafts.

#### CONCLUSION

For all the reasons above set forth, the Department requests that the Appellant's Motion for Reconsideration or Rehearing be denied.

Respectfully submitted,



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August 24, 2018  
Blythewood, South Carolina

**THE ADMINISTRATIVE LAW COURT  
IN THE STATE OF SOUTH CAROLINA**

Toyota of Greer,  
Appellant,

v.

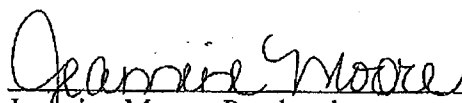
South Carolina Department of Motor Vehicles,  
Respondent.

ALJ Docket No. 18-ALJ-21-0011-AP  
Customer No. 30343986

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 24, 2018, I mailed, via USPS first class mail, a true and correct copy of the Return to Motion for Reconsideration upon the following:

Bradford N. Martin, Esquire  
P.O. Box 10410  
Greenville, SC 29603

  
Jeannine Moore, Paralegal  
Office of General Counsel  
SCDMV

Blythewood, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Toyota of Greer	)	Docket No. 18-ALJ-21-0011-AP
	)	
Appellant,	)	
	)	
v.	)	
	)	<b>TOYOTA OF GREER'S REPLY TO</b>
South Carolina Department	)	<b>SCDMV'S RETURN TO MOTION FOR</b>
Motor Vehicles	)	<b>RECONSIDERATION</b>
	)	
Respondent.	)	
_____	)	

**I. RESPONDENT CANNOT IGNORE THE REQUIREMENTS OF S.C. CODE § 56-15-40.**

Respondent attempts to ignore the plain language of the statutes on which it purports to rely. It argues that it should be allowed to cobble together standards that have been applied to unrelated statutes to support its suspension of Appellant's license. Such an attempt by the Department clearly exceeds its statutory authority.

**A. Respondent Improperly Attempts to Read § 56-15-30<sup>1</sup> in Isolation.**

Respondent attempts to apply S.C. Code Ann. § 56-15-30 in isolation simply because it is contained in the same chapter as § 56-15-350(b). To do so ignores the plain language of the statute, which states in pertinent part:

- (a) Unfair methods of competition and unfair or deceptive acts or practices **as defined in Section 56-15-40<sup>2</sup>** are hereby declared to be unlawful. (emphasis added)

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<sup>1</sup> Respondent claims that there was only room in DE-002 Performance Sanction Table Grid for a single reference to a dealer chapter violation. This is the DMV's document and it could have included any amount of information that it chose.

<sup>2</sup> The DE-002 Performance Sanction Table Grid lists only § 56-15-40(1) for dealer chapter violation.

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed.1992). If a statute's language is plain, unambiguous, and conveys a clear meaning "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

**B. S.C. Code § 56-15-40(1) Requires a Finding that Appellant Acted Arbitrarily, Unconscionably, or in Bad Faith.**

A finding that Appellant acted arbitrarily, unconscionably, or in bad faith is required to find that it violated the Dealer's Act.<sup>3</sup> Arbitrary conduct has been defined to include "acts which are unreasonable, capricious or nonrational; not done according to reason or judgment; depending on will alone." *Taylor v. Nix*, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (1992). For example, the South Carolina Supreme Court found it arbitrary for a dealership to notify its customers that its closing fee was a "means of reimbursing it for certain overhead costs . . ." and then to set the fee without calculating the costs. *Freeman v. Hendrick Honda*, 414 S.C. 362, 778 S.E.2d 902 (2015). Appellant has set forth in its brief on appeal and its Motion to Reconsider, the reasonable basis upon which it sold cars for which it had assurance that the liens had been satisfied and the titles, or releases, were forthcoming. See *Taylor v. Nix*, 307 S.C. 551, 416 S.E.2d 619 (1992).

Respondent misstates the facts when it alleges that the Bill of Sale issued to Quality Auto by the auction was misleading. It clearly stated that there were no liens in the name of Quality Auto. (R. 465). This fact is undisputed. As to the two other complaints, the only evidence in the Record is that there were no liens or encumbrances of the cars at the time they were sold.<sup>4</sup> The only

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<sup>3</sup> Respondent has not alleged that Appellant violated any provision of § 56-15-40(2).

<sup>4</sup> S.C. Code Ann. § 36-2a-103(1)(r):

"Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

remaining actions were for the lien holders to provide documentation of the satisfaction, which they were statutorily required to do. S.C. Code. Ann. § 56-19-680. The Hearing Officer was presented with the evidence that the liens had been satisfied prior to the sale. (R. 137, ll. 2-11, 13-16; 144; 161, l. 8-10; 314).

Appellant's actions following the sales were not arbitrary. It worked consistently to obtain the titles, as set forth in Appellant's Motion to Reconsider. Respondent argues that Appellant acted arbitrarily because it failed to offer loaner cars or to buy back the vehicles. Respondent ignores the fact that Quality Auto had the opportunity to return the Chrysler 300 for a full refund and chose not to do so.

*Brown v. Dick Smith Nissan, Inc.*, 414 S.C. 101, 777 S.E.2d 208 (2015) cited by Respondent is easily distinguishable. The South Carolina Supreme Court found that Dick Smith obtained a loan for Brown on a different car than the one she purchased and then refused to take corrective action. This resulted in Brown being required to pay for a car she did not agree to buy and did not possess. The evidence in the present case is that third parties caused the titles not to be issued within 45 days and that Appellant was working to obtain the needed documents. Respondent presents no case in which a court has found a violation of the Dealers Act by a dealership that is working to obtain documents needed from third parties, because that dealership did not offer a loaner car or to repurchase the vehicle in the interim.

Respondent's lack of standing to sue for damages suffered by customers does not relieve it of the burden of proving Appellant violated the Dealer's Act, including proving damage to the

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S.C. Code Ann. § 36-9-102(a)(32):

"Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

parties or the public, before issuing sanctions. Respondent did not present evidence that the three complainants ceased driving their cars or were unable to sell them. In fact, Quality Auto sold the Chrysler 300 at auction without a title. (R. 37, ll. 2-7)

**C. Respondent Improperly Attempts to Apply the South Carolina Unfair Trade Practices Act.**

It is improper to apply the standards of the South Carolina Unfair Trade Practices Act (SCUTPA) to the present case. S.C. Code § 56-15-350(b) does not give Respondent the right to suspend Appellant's license for a violation of the SCUTPA. The Official Notice does not allege that Appellant's license is being suspended pursuant to the SCUTPA. (R. 528).

The standards for proving a violation of the SCUPTA cannot be substituted for those of the Dealers Act whenever a violation of the Dealers Act cannot be shown. Respondent does not cite a single South Carolina case in which a showing of bad faith, or arbitrary or unconscionable acts were not required to find a violation of the Dealer's Act. Respondent does cite *Debondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 536 S.E.2d 399 (2000), which distinguishes between the standards required to prove violations of the Dealers Act and the SCUTPA. There is no suggestion by South Carolina's Supreme Court in *DeBondt* that the standards are interchangeable or that violation of one is a *per se* violation of the other.<sup>5</sup>

Respondent also misrepresents the holding in *Winston Realty Company, Inc. v. G.H.G., Inc.*, 331 S.E.2d 667 (N.C. 1985). In that case a jury found the defendant either published or caused to be published or knowingly made false or fraudulent representations in violation of N.C.G.S. §§ 95-47.6(2) and (9). The North Carolina Supreme Court noted that proof of fraud

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<sup>5</sup> Respondent suggests that it only had to show there was a capacity for the Affidavit & Notification of Sale of Motor Vehicle to deceive. It's reliance upon *Inman v. Ken Hyatt Chrysler Plymouth, Inc.*, 294 S.C. 240, 363 SE.2d 691 (1988) for this proposition is misplaced. The only cause of action in that case was for a violation of the SCUTPA.

necessarily constituted a violation of North Carolina's prohibition against unfair and deceptive acts. It upheld the trial court's conclusion that such a violation constituted an unfair or deceptive trade practice. The North Carolina Supreme Court did not find that any violation of a statute intended to protect the public is a *per se* violation of North Carolina's Unfair Trade Practices Act. This is vastly different from the argument that a failure to deliver title within 45 days of sale is a *per se* violation of the Dealers Act.

This Court is required to apply the standard in § 56-15-40(1) to find a violation of the Dealers Act. Respondent and the Hearing Officer exceeded their authority if they based the suspension of Appellant's license on the standards in the SCUTPA instead.

## **II. DE-002'S WILLFULNESS STANDARD IS REQUIRED AND WAS NOT MET**

The very point which Respondent tries to make regarding the willfulness requirement is at the heart of this case. Respondent charged Appellant with a 4-point violation for failure to provide title, as shown by its own Sanction Reports (R. 451, 469). This violation may only be charged when the dealer fails to deliver title "within 45 days of the date of sale when the prior seller or lien holder has delivered the title as required by law." (R. 439).

Respondent chose its own definition of willfulness in Procedure DE-002 that it must apply to all Dealers to assess a four-point violation. Leaks and Benjamin both agreed that willfulness is required to assess 4 points for failure to deliver title and that the DMV cannot find willfulness if a third party failed to deliver title to the dealer. (R. 68, ll. 13-17; R. 115, ll. 24 – 116, l. 11). Agent Benjamin chose to ignore the willfulness definition when issuing the Sanction Report. (R. 114, l. 12 – R. 115, l. 8). Respondent cannot arbitrarily apply a different standard for "willfulness" to Appellant and claim now that any failure to provide title within forty-five days is "willful."

### III. DE-002 WAS MEANT TO BE A BINDING NORM

#### A. The South Carolina DMV Dealer and Wholesaler Manual Makes it Binding on the Dealers.

It is quite clear that the DMV meant for Appellant to be aware of and to follow DE-002. First, the Sanctions Table for Dealer Performance Violations from DE-002 is contained in the South Carolina DMV Dealer and Wholesaler Manual. Although the DMV intentionally introduced a 2007 version of the Manual, to hide this fact, the updated Manual (which went into effect in August 2009) makes clear that Dealer Sanctions will be controlled by the table promulgated by DE 002.

Next, the DMV requires dealers to answer affirmatively that they have the Dealer's Manual when applying for a license. (R. 332).

Third, Page 5 – 3 of the Dealer Manual clearly states:

The Department of Motor Vehicles (DMV) has established **uniform** guidelines for the application and administration of sanctions for dealers... that violate rules, regulations, **policy**, or law. . . . DMV will suspend, for a period of 7 days, the license of any dealer... that accumulates 12 points. (emphasis added).

Page 5 – 4 of the Dealer Manual then lists the Dealer Performance Violations; the ones relevant for this case are:

Engaging in any action which causes damage to any party: 6 points to Revocation

Willful failure to deliver title to buyer or department within 45 days of sale: 4 points.

This Table is a summary of the DE-002 Sanction Table.

Then on page 5 – 6, the Dealer Manual gives examples. The examples are given because the point allocation changed when the process was converted in August of 2009. Page 5 – 6 clearly tells dealers they will be charged only 4 points for "Failure to Deliver Title." To summarize:

1. The Dealer Manual was required to be in the possession of the dealers;
2. The Dealer Manual clearly discussed sanctions and laid out that 6 points or more be issued for engaging in action which causes damage to any party;
3. The Dealer Manual clearly showed that 4 points will be issued for Willful failure to deliver title within 45 days of sale; and
4. The Examples illustrate that the dealer's failure to deliver title is a 4 point violation.

Therefore, it is crystal clear that the intention all along was for the Dealer Manual to apply 6 points to revocation for the sanction for damage to the public and 4 points for failure to deliver title. The Policy is meant for the dealers, and not just an internal policy for the DMV.

**B. DE-002 was Approved by the DMV Director.**

Now, DMV claims for the first time that that the "Chief Executive Authority of the Agency did not give final agency approval of DE-002." (Return p. 8). There is absolutely nothing in the Record that supports this assertion. To the contrary, what is in the Record clearly shows is that the DMV has an official procedure that has been adopted since August 2009. DE-002 is "Approved By" and signed by the DMV Director. (R. 436).

**C. DE-002 Interprets and Applies its Power to Sanction.**

Also, it is quite clear that DE-002 is the DMV's effort to interpret and apply the statutes that impact Dealer Sanctions. It has a Definitions Section defining willful failure to deliver title. It clearly lists the Performance Violations and allocates various points for each violation. It covers in detail how suspensions will be determined. Nothing could be clearer that DMV's intention was to interpret the statute and impact the dealers through the sanction procedure. This is why they put the dealers on notice through the Dealer Manual.

DE-002 itself clearly states on the top:

**SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES  
PROCEDURE DE-002 - DEALER SANCTIONS**

It then has a line entitled:

**SECTION OF LAW**

It then lists:

**LEGAL AUTHORITY**, then it provides a **PROCEDURAL SUMMARY**. It also had a section for **REQUIRED ACTION** which **requires** Managers to have the employees read the Procedure, complete a Policy/Procedure Acknowledgment, and follow it.

Clearly, the intent was to have the force of law in issuing points and eventually sanctions.

DMV asserts on p. 10:

Nor is it availing to Appellant to assert, as it seems to, that DE 002 is a “binding norm” simply *because* it expressed as mandatory on Department employees.

What clearer intent could the DMV make that this is a binding norm? “Mandatory” and “binding” are synonyms.

**D. The Reason for Suspension was Clearly Based on DE-002.**

DMV made clear that the reason for suspension was that Appellant accumulated points under DMV Policy DE-002. This was stated in the official Notice of Dealer License Suspension:

**REASON:**

The Department of Motor Vehicles (DMV) has determined that you have violated registration, dealer licensing and titling provisions of Title 56 and have accumulated 12 or more points listed below **under DMV Policy DE-002 pertaining to Dealer Sanctions**. (emphasis added).

**E. The South Carolina Supreme Court Opinion in *Joseph* Checks the Actions of the “Administrative State.”**

The DMV attempts to distinguish *Joseph v. S.C. Dep’t. of Labor*, 417 S.C. 436, 790 S.E. 2d 763 (2016) because the Supreme Court concluded that the Position Statement “was intended to have the force of law.” The reason the Supreme Court found the Position Statement to be a binding norm is because it gave the Board no discretion in applying the policy. Likewise, the assistant manager was required to follow DE-002, and had no discretion to rewrite it and apply sanctions as she saw fit.

Further, the *Joseph* Court did not justify reversal by finding an equal protection violation alone. In fact, the majority opinion was a plurality opinion, and the deciding vote was Justice Kittredge. He clearly stated in his concurrence that he would not support reversing based on constitutional grounds. Instead, he wanted to check the power of the fourth branch of government that “presents a threat to our civil society” by applying statutory grounds alone.

It is telling that the DMV continues to support a very serious penalty to the private property rights of the Dealership by ignoring not only its duty to have its procedures approved by the Legislature, but also ignoring its duty to have it approved by the Manager of the Department. *Joseph* cries out for this case to be reversed, and for the extended expense of this appeal to end.

**E. Home Healthcare Requires the Procedure to be Followed.**

The DMV improperly cites *Home Healthcare Services Inc. v. South Carolina Tax Commission*, 312 SC 324, 440 SE 2d 375 (1990). The Supreme Court made it clear that if an agency wanted to establish a binding norm, it needed to be approved as a regulation. DE-002 has been shown to be a binding norm. Further, *Home Healthcare* warned the Tax Commission if it was a close call, it should go through the procedures and have a regulation approved.

In *Home Healthcare*, the committee simply issued an internal memorandum in the form of questions and answers. Quite to the contrary, DE-002 was an extensive procedure of applying points for various violations, and defining words and how the procedure should be implemented. Its point system is then published to the dealers in the Dealers Manual. Therefore, *Home Healthcare* supports the conclusion that this was a required regulation and underlines the danger of administrative overreach.

**F. *Moret and Crossland Support the Reason that the DMV Cannot Arbitrarily Depart from its General Procedure***

The DMV cites the Federal Administrative Procedures Act in their attempt to distinguish *Moret v. Karn*, 746 F.2d 989, 3rd Cir. (1984); but this only supports Appellant's position. It is clear that DE -002 is designed to "implement, interpret, or prescribe law or policy" in applying sanctions through points. The same is true in *Piper v. Crossland*. Clearly, the dealership had notice of this procedure, as it was published in the Dealer Manual and referred to in the Notice of Suspension. (R. 528). This is the exception that *Piper v. Crossland* recognizes.

**G. *The Remaining Arguments Only Support Application of DE-002.***

Administrative Procedure Act SC Code §1-23-10 (4) clearly defines a regulation that fits the facts of this case:

"Regulation" means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency... but does not include descriptions of agency procedures applicable only to agency personnel...

It is clear that is exactly what DE-002 is: it is an attempt to mandatorily require all DMV employees to follow a uniform procedure applicable to the general public of dealers. DE-002 is clearly meant to apply to dealers and not just agency personnel. As their counsel stated in argument: "That's the least they can do."

The examples that the DMV give only show how DE-002 is quite different. Obviously, an internal policy regarding how personal calls are handled by DMV employees is nothing like DE-002 with its Sanctions Table published and distributed to the dealers with the danger of taking their license away. This is also true with the Department's use of its "Phoenix System." Nothing in DE-002 has to do with the internal procedures of how employees are supposed to act in the performance of their general duties. Rather, it is a specific, direct procedure as to how it should sanction dealers in order to take away their property rights. This is exactly what should be required to be approved by the General Assembly in order to avoid the rise of the fourth branch.

The case of *Service Employees Intern. Local 6 v. Idaho Dep't of Health and Welfare*, 106 Idaho 756, 683 P. 2d 404 (1984) deals with the internal procedures of hiring and firing employees of the department. Obviously, DE-002 has nothing to do with these internal personnel issues, but has direct impact on the dealers in South Carolina. The "rule" cited in *Service Employees* clearly says that it does not apply when it affects the private rights of the public. Obviously, DE-002 affects the private rights of car dealers.

In *In the Interests of Doe*, 9 Haw. App. 406, 844 P.2d 679 (1997), the internal procedure as to how to administer sobriety tests was not available to the public; whereas the DMV made the Sanction Table applicable to the dealers through the Dealer's Manual.

Distinguishing *Eagle Hill Corp. v. Commission on Hospitals and Health Care*, 2 Conn. App. 68, 477 A.2d 660 (1984) is that the procedure of DE-002 is meant to have an impact in the future. It is supposed to be applied every time the DMV attempts to sanction a dealership. It's to provide a uniform system that certainly will have an impact on the rights and obligations of parties who may appear before the agency in the future.

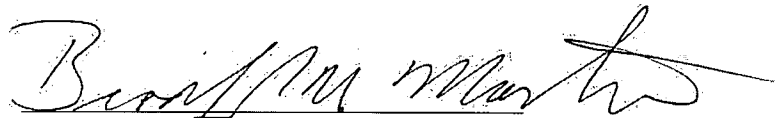
In *Tyska by Tyska v. Board of Education Township High School District 214 Cook County*, 73 Ill. Dec. 209, 453 N.E. 2d 1344 (1983), the procedure again was not made public. They simply stated that there would be strict adherence to the criteria developed. This is quite unlike DE-002, which was disseminated through its Sanction Table to all dealers through the Dealer's Manual. This case requires reversal to avoid an assistant manager unilaterally applying sanctions where fairness and uniformity would not allow it.

**E. DE-002 Does Not Need to be a Regulation to be Enforceable.**

Whether DE-002 is a regulation or not is not the final word. It is clear that it was a procedure followed by the DMV and there is absolutely nothing in the Record to support its unilateral change by an assistant manager. The DMV has every right to change their procedure, but not unilaterally to the detriment of one dealer. For this further reason this case calls out for reversal.

For these reasons the Court should reconsider/rehear its Order and rescind the 7-day suspension of Toyota of Greer's license in order to avoid the consequences of an unchecked administrative state.

August 31, 2018



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**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Toyota of Greer	)	Docket No. 18-ALJ-21-0011-AP
	)	
Appellant,	)	
	)	
v.	)	
	)	
South Carolina Department	)	<b>CERTIFICATE OF MAILING</b>
Motor Vehicles	)	
	)	
Respondent.	)	
<hr style="border: 0.5px solid black;"/>		

I, Peggy McComb, Legal Assistant at Bradford Neal Martin & Associates, PA, hereby certify that due and proper service of the document(s) affixed hereto and described below was made by depositing a true copy(ies) of same in the United States Mail at Greenville, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon.

**DOCUMENTS:**                      **Toyota of Greer's Reply to SCDMV's Return to Motion for Reconsideration/Rehearing**

**COUNSEL/PARTY SERVED:**

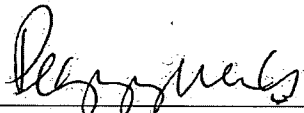
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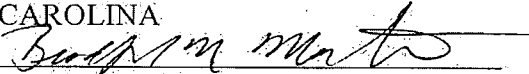
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\_\_\_\_\_  
Bradford N. Martin

My Commission Expires: 10-17-21

Date: 31 Aug 18

[SEAL]

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

South Carolina Department of )  
Motor Vehicles, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
Toyota of Greer, )  
 )  
Respondent. )

---

COPY

HEARING

\* \* \* \* \*

October 2, 2017



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Hearing Officer

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1 SWEARING OF WITNESSES:

2 **THE COURT:** My name is Phil Addington and I have  
3 been appointed by the South Carolina  
4 Administrative Law Court to preside at this  
5 contested case. The entire proceedings are  
6 being tape recorded for departmental reference  
7 and are a matter of public record. I'm gonna  
8 start to the left here. You have witnesses  
9 here that I took their name down. What I'm  
10 gonna do is go ahead and swear each one in at  
11 this time. If you would stand for me ---

12 **MR. HOGAN:** Yes.

13 **THE COURT:** ~~Mr.~~ Mr. Hogan. Do you solemnly swear  
14 the testimony you're about to give in this  
15 matter will be the truth, the whole truth, and  
16 nothing but the truth?

17 **MR. HOGAN:** Yes.

18 **THE COURT:** Okay. You may be seated. And Ms. -- I  
19 can't read my own writing now -- Powell.

20 **MS. POWELL:** Yes, sir.

21 **THE COURT:** If you'll raise your right hand for me.  
22 Do you solemnly swear the testimony you're  
23 about to give in this matter will be the truth,  
24 the whole truth, and nothing but the truth?

25 **MS. POWELL:** Yes, sir.



1 THE COURT: Okay. You may be seated. And give for  
2 me your full name.

3 MS. MILLER: Michelle Ann Miller.

4 THE COURT: And do you solemnly swear to tell the  
5 truth, the whole truth, and nothing but the  
6 truth?

7 MS. MILLER: Yes, sir.

8 THE COURT: Okay. You may seated. If you'd stand  
9 for me, please, sir, and give for me your full  
10 name, your relationship to this matter.

11 MR. BENJAMIN: Jason Benjamin. I'm the dealer agent  
12 with the South Carolina Department of Motor  
13 Vehicles.

14 THE COURT: Okay. If you'll raise your right hand  
15 for me. Do you solemnly swear the testimony  
16 you're about to give in this matter will be the  
17 truth, the whole truth, and nothing but the  
18 truth?

19 MR. BENJAMIN: Yes, sir.

20 THE COURT: Okay. You may be seated. Yes, ma'am.  
21 If you'll give for me your full name and your  
22 address?

23 MS. BYRD: Lisa Byrd.

24 THE COURT: And your relationship to this matter?

25 MS. BYRD: Jason's supervisor, team lead.



1 THE COURT: Okay. If you'll raise your right hand  
2 for me. Do you solemnly swear the testimony  
3 you're about to give in this matter will be the  
4 truth, the whole truth, and nothing but the  
5 truth?

6 MS. BYRD: Yes, sir.

7 THE COURT: And Ms. Leaks, is she gonna enter  
8 testimony also here today? Okay. If you'll  
9 raise your right hand for me. Give for me your  
10 full name and your work relationship.

11 MS. LEAKS: Zenda Leaks. And I am the Assistant  
12 Manager of the Dealer Licensing Unit.

13 THE COURT: If you'll raise your right hand for me,  
14 Do you solemnly swear the testimony you're  
15 about to give in this matter will be the truth  
16 ---

17 MS. LEEKS: Yes, sir.

18 THE COURT: --- the whole truth, and nothing but the  
19 truth?

20 MS. LEEKS: Yes, sir.

21 THE COURT: Okay. You may seated. And we have one  
22 more, Mr. Porter or Mr. Bocoock. If you'll give  
23 for me your full name and your relationship to  
24 this matter.

25 MR. BOCOOK: Okay. My name is Scott Bocoock and I'm



1 the principal of Quality Auto of Anderson. And  
2 the relationship, I just filed a complaint  
3 against Toyota of Greer for a title that was  
4 not produced.

5 **THE COURT:** Okay. If you'll raise your right hand.  
6 Do you solemnly swear the testimony you're  
7 about to give in this matter will be the truth,  
8 the whole truth, and nothing but the truth?

9 **MR. BOCOOK:** Yes, I do.

10 **THE COURT:** Okay. You may -- you may be seated. At  
11 this time, we'll turn it over to Mr. Porter.  
12 Do you have anything?

13 **MR. MARTIN:** Martin. I'm Brad Martin.

14 **THE COURT:** Okay. I got you noted as the attorney  
15 of record for Toyota.

16 **MR. MARTIN:** Yes.

17 **THE COURT:** Yes, sir.

18 **MR. MARTIN:** And she -- and Laura Teer should also  
19 be on your list. That's T-E-E-R. She'll be  
20 handling some of the witnesses too.

21 **THE COURT:** First name is Laura?

22 **MS. TEER:** Laura.

23 **MR. MARTIN:** Laura, uh-huh.

24 **THE COURT:** And at this time, we'll turn over to Mr.  
25 Porter, any evidence, testimony, that you have...



OPENING STATEMENTS:

1  
2 MR. PORTER: All right. Very, very brief opening  
3 statement. As you're probably aware, Mr.  
4 Hearing Officer, we have a procedure that we go  
5 by in the Department of Motor Vehicles and it  
6 has to do with sanctions for dealerships. And  
7 this is probably somewhat unique in that this  
8 is the first -- this is the first franchise  
9 dealership that we're aware of that has been in  
10 this position. And our position in this matter  
11 is simply this, if you sell -- certainly, if  
12 you buy, but certainly, even more so, if you  
13 sell vehicles out of inventory before you know  
14 the status of the title and the availability of  
15 the title into commerce, then there are  
16 consequences for that. And it's really just as  
17 simple as that. We really don't think it has  
18 anything to do with the volume of business at  
19 the dealership and we really don't think that  
20 that should enter into it. And I would suggest  
21 to you what we're asking for here is a seven-  
22 day suspension. According to our procedure, if  
23 we're going to follow our own rules, that is  
24 the least we can do under the circumstances we  
25 find ourselves in. And we would submit to you

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1 that there really is not and should not be any  
2 different standard between a franchise  
3 dealership and any other dealership, such as  
4 Mr. Bocook's dealership. And he's going to  
5 tell you a little bit of a story of his  
6 background in this. Thank you for your  
7 attention and look forward to presenting our  
8 case.

9 MR. MARTIN: If it please the Court. Do you mind if  
10 I refer to you as the Court?

11 THE COURT: That would be fine.

12 MR. MARTIN: I'm Brad Martin. I'm from Greenville,  
13 the firm of Bradford Neal Martin. And we have  
14 had the joy of representing the dealership that  
15 has never had this situation arise before. I  
16 am very proud to say that when my clients came  
17 to Greer about 15 years ago, they provide lots  
18 of jobs. In fact, at the Toyota store, there  
19 are 85 jobs that are at stake. These people  
20 will lose their salaries for a whole week if  
21 this happens. I can also tell you in the time  
22 period that this suspension covers, we have  
23 sold 25,192 cars. There have been 25,192  
24 titles handled. And out of those titles, only  
25 three have had problems. So we are here asking



1 you not to suspend us for a week because that  
2 will cost us about \$2.1 million in sales. So  
3 this is not just oh, well, you just get a free  
4 week off. This is a huge, huge issue. The  
5 other problem it will cause is that if we are  
6 not able to sell cars for three days or more,  
7 Toyota can literally take our dealer license  
8 away. So this is a matter of life and death  
9 for my client. Now, we have been charged with  
10 two violations. One is under the Dealer's Act,  
11 which is 56-15-30, unfair methods of  
12 competition and unfair or deceptive acts or  
13 practices. Under the law, in order to violate  
14 the Dealer's Act, you must do something that is  
15 arbitrary, in bad faith, or unconscionable.  
16 And we will present evidence to show that there  
17 is absolutely no situation that you could say  
18 that we have done something arbitrary or in bad  
19 faith or unconscionable. You have 25,192 deals  
20 and everything works fine and only three where  
21 there's a problem. You can't really say that  
22 we've done something that is arbitrary, in bad  
23 faith, or conscionable. The second violation  
24 shows up, it's called a willful failure to  
25 provide a tag within 45 days. The evidence



1 will be very clear that there was absolutely no  
2 willful action on the part of Toyota of Greer  
3 here. What we have is is we have three  
4 distinct issues in which other people didn't do  
5 what they were supposed to do. And you'll hear  
6 testimony with the first one in which the car  
7 had a -- it was a nine year-old car. The  
8 people said we have had all the liens  
9 satisfied. We did the deal. We checked and it  
10 turned out on DMV's on records that there was  
11 a lien on it four years earlier, which had not  
12 been satisfied. We immediately contacted the  
13 bank and they said yeah, it's been satisfied.  
14 But it took them forever to get us the  
15 paperwork on it. Not because we didn't check  
16 every two or three days, they just didn't do  
17 what they were supposed to do. So we knew that  
18 there was no lien on that car and we knew that  
19 25,000 times if you can sell a car and within  
20 45 days, you're gonna get the title. Here is  
21 where Ford Motor Credit just billed out the job  
22 and didn't do it. But they finally did and the  
23 person has the car. And remember, the customer  
24 gets the car and they're very happy to have the  
25 car because they get to use it. The second



1 deal had to do with Mr. Quality Auto, Mr.  
2 Bocook over here, and he bought his car on  
3 consignment from an auto auction. And  
4 basically what happens there is the auto  
5 auction put this car in the blue light lane and  
6 that tells him right off the bat this car is  
7 being sold without a title. He knew it from  
8 day one. You will hear testimony that the  
9 rules are that when you buy from the auction,  
10 the deal is not final until you get the title.  
11 And he agreed that if he had a problem getting  
12 the title, he had 48 hours to tell the auction  
13 and he could return the car. We, in fact,  
14 talked with him and offered to buy the car back  
15 from him. By the way, the car was a \$300 car.  
16 It was a piece of junk. It was ancient. And  
17 we gladly would have taken the car back, but he  
18 didn't want to. And what the rules say with  
19 the auction is if you don't give us notice 48  
20 hours and return the car, you agree to wait for  
21 the title. Which is what he did, and he got  
22 the title. And, again, here was a title  
23 company and the title company is where if you  
24 don't have enough money, you go to them and  
25 you've got to give them your title, then you



1 pay them off. These people are notorious for  
2 not doing paperwork. These folks took forever  
3 to get us the title, but they eventually did.  
4 Again, not because of anything Toyota of Greer  
5 did wrong, but because of what Carolina Title  
6 didn't do what they were supposed to do. Mr.  
7 Bocook knew all about those rules and he was  
8 willing to take that risk. The third vehicle  
9 had to do with a car that involved a sale where  
10 the fellow had a Greenville address, sold the  
11 car to us, and said, oh, I don't have the  
12 title, but I'll get it for you. So we called  
13 him and called him and called him and he never  
14 gave us the title, so we started to check to  
15 try to get it ourselves and found out that the  
16 fellow had apparently titled the car in North  
17 Carolina, which he didn't disclose because he  
18 had a Greenville residence when he moved here.  
19 So once we found out it was in North Carolina,  
20 we put the procedures in to get the title from  
21 North Carolina. It came in and there were no  
22 problems. So in conclusion, what our evidence  
23 is gonna show is number one, nothing was done  
24 in an arbitrary, bad faith, or unconscionable  
25 way. And, number two, nothing was done



1 wilfully. Toyota of Greer has handled 25,192  
2 titles in this time period and only three times  
3 did we have a bank that wouldn't get us the  
4 paperwork in time; we had an auction where the  
5 fellow said, I'll take the risk rather than  
6 returning the car; and we had a title place  
7 that took over the 45 days getting us the  
8 title. Every single time, there's nothing that  
9 we could have done. We'd (inaudible) these  
10 people and the evidence will show that there's  
11 been no willful violation. Therefore, \$2.1  
12 million should not go out the door and the  
13 people of Greer should not be unable to buy a  
14 Toyota for a week that the State wants to  
15 impose. Thank you.

16 **THE COURT:** At this time, Mr. Porter, we'll turn  
17 back over to you for witnesses, testimony,  
18 anything you have at this time.

19 **MR. PORTER:** Very briefly, I'd like to respond to a  
20 couple of these allegations. One is there are  
21 only three instances we're talking about here,  
22 as well, and our evidence will show that. The  
23 other is is that there supposedly is nothing  
24 willful. Well, when you violate the law, we'll  
25 give you some case law that shows that that is



1 at least evidence, maybe not conclusive, but at  
2 least evidence of willfulness. I would ask  
3 your indulgence. I ~~was~~ we were a little bit  
4 hurried getting up here. I'd like to go out  
5 and -- you know, I'm already getting a little  
6 bit of a cotton mouth because I haven't had  
7 water, if I may and just come right back in.  
8 I'll be only a minute or so.

9 **THE COURT:** That will be fine. We'll go off the  
10 record at this time.

11 **MR. PORTER:** Thank you.

12 (Off the record.)

13 **THE COURT:** We're back on record at this time.

14 **MR. MARTIN:** And, Your Honor, just for the record, I  
15 would object to any evidence that is not  
16 contained in the letter of 2/27/2017. We were  
17 -- this is the official notice of dealer  
18 license suspension and there's only three  
19 vehicles that (inaudible) case today. And  
20 under the Administrative Procedures Act, they  
21 have a duty to put us on notice of what we're  
22 being sanctioned for and, therefore, any other  
23 things that he may dream up that I don't know  
24 about are not appropriate for today.

25 **MR. PORTER:** Our point is that this is a pattern



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1 practice of this dealership. This gentleman  
2 that raised the issue that there was nothing  
3 local and that there were only three instances,  
4 we are rebutting that.

5 **THE COURT:** I'm gonna go ahead and allow the witness  
6 and at the time that we do the order, we will  
7 determine whether it's relevant or not  
8 pertaining to the documentations that are  
9 shown. If you'd like to come up and have a  
10 seat here, Mr. Bocoock.

11 **MR. BOCOOK:** Bocoock.

12 **THE COURT:** Bocoock, okay.

13 **MR. BOCOOK:** Bocoock.

14 **THE COURT:** I'm sorry.

15 **MR. BOCOOK:** No, you're fine, sir.

16 **THE COURT:** And you've already been sworn in.

17 **MR. BOCOOK:** Okay. Yes, sir.

18 **SCOTT BOCOOK, being duly sworn, testifies as follows:**

19 **MR. BOCOOK - DIRECT EXAMINATION BY MR. PORTER:**

20 **Q:** Good morning, Mr. Bocoock.

21 **A:** Good morning.

22 **Q:** I'm Phillip Porter. I'm representing the  
23 Department in this matter. Where do you work,  
24 sir?

25 **A:** I work for Quality Auto of Anderson. We're



1 located at 911 Whitehall Road in Anderson,  
2 South Carolina.

3 Q: And describe very briefly your business.

4 A: We're a -- a non-franchise dealership, I think  
5 referred to as a mom and pop operation when I  
6 walked in. But we're a non-franchise,  
7 independent dealership in Anderson, South  
8 Carolina.

9 Q: Let me hand you a document. Can you tell me  
10 what that is?

11 A: Yes, sir. This is where I had to complete a  
12 customer complaint form against Toyota of  
13 Greer.

14 Q: Okay. Can you describe the nature of your  
15 complaint?

16 A: Yes, sir. We had, as the gentleman described  
17 in his opening statement, had purchased a  
18 vehicle at America's Auto Auction in Greer,  
19 South Carolina. We did purchase it on February  
20 26 of 2016. We purchased this as a red light  
21 vehicle, but under the light he described being  
22 a blue light, that meant the title is attached,  
23 not that we wait and hope or pray that one day  
24 we may get a title. So blue light does not  
25 mean that we hope and pray that we'll get a



1 title. So it means that the title is attached  
2 and that there's not a title present at the  
3 auction at the time of purchase. But it's not  
4 a cue for me as an independent dealer that I  
5 could wait and then maybe one time or one day  
6 hopefully in the future receive title for the  
7 vehicle that I purchased.

8 Q: So what happened after you purchased it at  
9 auction?

10 A: We purchased this again on February 26 and what  
11 happened was his 30 days went by and we didn't  
12 receive the title. So on the 30th day, we  
13 began to start making phone calls, which we  
14 did. We made phone calls to the auction  
15 because they're the go-between between us and  
16 the franchise dealership. And I just  
17 communicated with my rep and explained to him  
18 that we had not received the title to this  
19 vehicle and that we would appreciate it if they  
20 could give us some type of -- because we do  
21 understand being in the car business that there  
22 is liens sometimes involved, there is pay-offs  
23 involved, and sometimes it may take more than  
24 30 days. And we understand that. So we kind  
25 of asked them to reach out and touch base with



1 Toyota of Greer. So 30 days becomes 60 and  
2 then 60 days became 120 and, you know, by this  
3 point, you know, we're three months in and  
4 we're still not getting any type of  
5 satisfaction. No representative from Toyota of  
6 Greer ever called me on the telephone and said,  
7 hey, Scott, we just want to reach out to you  
8 and touch base with you and let you know that  
9 you've been waiting for three months for a  
10 title and we apologize that you've never  
11 received this title, but this is what's going  
12 on. We wanted that. We wanted to have some  
13 communication. We never received any  
14 communication from Toyota of Greer. We never  
15 received any type of documentation stating that  
16 hey, it's gonna be another three or four weeks.  
17 We never received anything. Matter of fact, we  
18 did give 48 hour notice and, you know, we also  
19 -- we took it a step further and we reached out  
20 and tried to personally contact Toyota of Greer  
21 with no response whatsoever.

22 Q Okay. So did you ---

23 A So, yes, on the 100 and it was I believe --  
24 let's see how many days it took me. On the  
25 135th day I believe I had had enough and I'd



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1 advised my representative to notify Toyota of  
2 Greer that if they did not communicate with me  
3 and produce the title, that I was gonna have no  
4 choice but to file a state complaint. And I  
5 didn't immediately do so. I gave them 48 hours  
6 before I even filed the complaint. And, you  
7 know, I wanted to state that in their opening  
8 statement they said that I purchased a piece of  
9 junk. You know, it was tax time; it was a  
10 cheap car, but when I purchased that vehicle,  
11 I'm sure that somebody could use that vehicle  
12 that is on, you know, a budget and that's the  
13 business that we're in. But, you know, I  
14 didn't anticipate because it was a cheap car  
15 that, you know, Toyota of Greer could care less  
16 whether I got the title or not.

17 Q: Did you sell or attempt to sell this vehicle?

18 A: Yes, we did sell this vehicle. We had to sell  
19 it, at auction at a loss because, obviously,  
20 we're sitting around and waiting for almost  
21 four months, so we took a loss on this vehicle.

22 Q: Okay. Was this the only transaction you had  
23 with the Toyota of Greer?

24 MR. MARTIN: Objection, Your Honor. Again, the only  
25 thing that's before this body is this



1 particular deal. We're not prepared to defend  
2 anything else that has to do with whatever else  
3 this man did. We've been put on notice, the  
4 Administrative Procedure's Act requires the  
5 State of South Carolina if they're gonna shut  
6 you down to give you notice. They did, it's  
7 totally inappropriate to go (inaudible).

8 MR. PORTER: The only reason we're talking about  
9 this is counsel said there are only three  
10 instances that we're relying on. The evidence  
11 we will put before you, they were warned at  
12 least six times that this sort of behavior was  
13 gonna run into sanctions for them.

14 MR. MARTIN: They should have put it in their  
15 letter, but they didn't. They only put three.

16 MR. PORTER: I -- I ---

17 MR. MARTIN: We're on notice ---

18 MR. PORTER: ~~That~~ I fail to see anything ~~---~~

19 MR. MARTIN: ~~That~~ of three ---

20 MR. PORTER: ~~That~~ in the Administrative Procedures  
21 Act ---

22 MR. MARTIN: Excuse me. Excuse me. Please don't  
23 interrupt me, Mr. Porter. Your Honor, what I'm  
24 saying is under the Administrative Procedure  
25 Act, they have an absolute duty to put us on



1 notice of what they're doing and why they're  
2 suspending us. They told us three times.  
3 We're prepared to talk about three. He's now  
4 -- he can't just pile on where we don't have  
5 enough time to even respond to it. It's just  
6 unfair. It's not how the system is designed  
7 and we would ask that the Court not to allow.

8 **THE COURT:** I'm gonna allow the testimony to go in.  
9 Whether I will allow it within my report, I'll  
10 make a ruling at the time that I do my order.

11 **MR. MARTIN:** Thank you.

12 **THE COURT:** You may continue.

13 **MR. PORTER:** Thank you.

14 **Q:** Did you get the question?

15 **A:** Could you just repeat that one more time so I  
16 make sure I'm clear?

17 **Q:** Yes, was there any other instances that you did  
18 business with Toyota of Greer?

19 **A:** Absolutely not. I refused to purchase any more  
20 vehicles from them after the -- basically --  
21 just the lack of response that I received from  
22 their management.

23 **Q:** Were there any times prior to this incident  
24 that you had done business with them?

25 **A:** We have -- I do not have the exact list, so I



1 would just rather -- without having all the  
2 facts before me, just state that this is the  
3 matter, this particular case here.

4 Q: No further questions.

5 THE COURT: Cross-examination?

6 MR. BOCOOK - CROSS-EXAMINATION BY MR. MARTIN:

7 Q: Mr. Bocook, thank you for coming today.

8 A: Uh-huh.

9 Q: It's true that you didn't buy this car from  
10 Toyota of Greer; you bought it at the America's  
11 Auto Auction, isn't that right?

12 A: Yes. That is correct.

13 Q: Okay.

14 A: They are the agent, but, of course, Toyota of  
15 Greer was the seller.

16 Q: Okay. But you -- you agreed to follow the  
17 rules of the auction dealing with the buying  
18 and selling of this car?

19 A: When somebody brings the vehicle to the  
20 auction, they're stating ---

21 Q: Please answer my question.

22 A: --- that they have ownership of that vehicle.

23 Q: Did you agree to follow the rules of the  
24 auction when you went to the auction to buy a  
25 car?



1 A: Yes.

2 Q: Okay.

3 A: Just like they agreed to follow the rules when  
4 they sold the car.

5 Q: Thank you for your editorial comment. I'd  
6 appreciate it if you'd answer my question.

7 A: I did.

8 Q: No, you did not.

9 A: Yes, I did.

10 Q: You editorialized. Take a look at this.

11 A: Okay.

12 Q: Do you recognize what that is?

13 A: Oh, yes, that's the block ticket.

14 Q: Okay. Is that the one for the deal we're  
15 talking about?

16 A: It is.

17 MR. MARTIN: I'd like to have this exhibit,  
18 Defendant's Exhibit 1, if there's no objection.

19 THE COURT: Any objection to the exhibit?

20 MR. PORTER: No, in fact, we were going to offer  
21 this, I neglected to do that.

22 THE COURT: Okay. We will enter that in as  
23 Petitioner's -- or Respondent's Exhibit Number  
24 1.

25 (Respondent's Exhibit Number 1 was admitted into



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1 evidence.)

2 Q: Okay. Mr. Bocook, you don't dispute that you  
3 paid \$300 for this car, do you?

4 A: Actually, it was \$405 for the car.

5 Q: But do you see the selling price?

6 A: Yes.

7 Q: The selling price is \$300, isn't it?

8 A: Correct.

9 Q: Then there's a buyer's fee that gets it to 405,  
10 right?

11 A: Correct.

12 Q: But the selling price of the car itself was  
13 \$300?

14 A: Correct.

15 Q: So it's not one of the most expensive cars in  
16 America, is it?

17 A: I mean, it was what we paid for the vehicle.

18 Q: Right, right. Now, would you ---

19 A: I don't think that the amount of the purchase  
20 should enter into whether you're gonna produce  
21 the title or not.

22 Q: Okay.

23 A: Would you agree upon that?

24 Q: You don't get to ask me questions. I only get  
25 to ask you questions, okay.



1 A: Okay. Well

2 Q: Now, do you see where it has the -- in this  
3 box, it has yellow, green, red, and blue, do  
4 you see that?

5 A: Uh-huh.

6 Q: And it has in the blue, T/A.

7 A: Uh-huh.

8 Q: Do you see that? Now T/A means title attached,  
9 right?

10 A: Correct.

11 Q: And title attached is defined as -- in the  
12 auction documents itself, title attached/title  
13 unavailable/title absent. This light, which is  
14 a blue light is used to announce that the title  
15 is not present at the time of the sale. Is  
16 that correct?

17 A: Correct.

18 Q: So you knew at the time that you bought this  
19 car, that at the time of the announcement, that  
20 the title was not present, correct?

21 A: That's correct.

22 Q: So you knew you had to wait for it, right?

23 A: Correct.

24 Q: Okay. Now, have you seen the arbitration  
25 policy rules of America's Auto Auction before?



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1 A: Yes, I'm familiar with the rules.

2 Q: Okay.

3 MR. MARTIN: I'd like this to be Exhibit 2, Your  
4 Honor.

5 A: I believe they just recently updated them, as  
6 well.

7 THE COURT: Any objection, Mr. Porter to the second  
8 exhibit?

9 MR. PORTER: Take a moment, if I may. No objection.

10 THE COURT: We'll enter it in the Respondent's  
11 Exhibit Number 2.

12 (Respondent's Exhibit Number 2 was admitted into  
13 evidence)

14 Q: Okay. You're not disputing that these were the  
15 rules that were applicable in February 2016,  
16 are you?

17 A: No, I would assume that you would provide the  
18 appropriate rules.

19 Q: Okay. All right. Now, when you have a title  
20 attached where the title is not present, you  
21 have certain duties that shows up on paragraph  
22 9, assignment title timeliness, is that right?  
23 Do you have a copy of it or not?

24 A: No, I do not.

25 MR. MARTIN: Can I grab that from you?



1 Q: So, if you will read with me, sir, under  
2 assignment title timeliness (a) seller has up  
3 to 30 -- up to a maximum of 30 calendar days  
4 for title to be received by the auction. Did  
5 I read that correctly?

6 A: Correct.

7 Q: (B) after the 30th calendar day, the buyer must  
8 give the auction a 48-hour notice. After 48  
9 business hours, the buyer has the option to  
10 return the vehicle or wait for the title. Did  
11 I read that correctly?

12 A: Or wait for a reasonable period of time for the  
13 title.

14 Q: Okay. So is it fair to say that you have the  
15 absolute right to return that car 48 days after  
16 the 30 days?

17 A: We had that right.

18 Q: That's your option.

19 A: We had that right.

20 Q: Okay.

21 A: We also had the right to wait for a reasonable  
22 period.

23 Q: Right. But you did not return that car, did  
24 you?

25 A: No, I did not.



1 Q: Okay. But if you did, you wouldn't have had a  
2 problem, right, because you would have gotten  
3 your money back and everything would have been  
4 fine, right?

5 A: You know, I don't -- again, I don't understand  
6 what you're saying.

7 Q: Okay. Fair enough. Okay. Then it says (c)  
8 buyer responsibilities. The seller auction  
9 shall not be liable for any vehicle sale or  
10 repairs made by the buyer before the title is  
11 received by the buyer, did I read that  
12 correctly?

13 A: Right.

14 Q: If the title has been mailed from the auction  
15 to the buyer, the buyer may not return the  
16 vehicle. Buyer is required to notify the  
17 auction in a timely manner consistent with the  
18 auction policy before returning the vehicle.  
19 Correct? Did I read that correctly?

20 A: Uh-huh.

21 Q: And is it true that you never did return the  
22 vehicle?

23 A: That is correct.

24 Q: So in all fairness, you bought a car for \$300  
25 that you knew the title was not attached,



1 correct? Is that correct?

2 A: It was attached. The title was attached.

3 Q: It was not available with the car when you  
4 bought it, you knew that?

5 A: Yes, that is correct. It was not at the sale,  
6 the date of the sale.

7 Q: That's right.

8 A: Millions of cars are bought and sold ---

9 Q: And ---

10 A: --- daily at auctions where the titles are  
11 attached.

12 Q: Right. And you knew that if the title didn't  
13 come within 32 days, you could give that car  
14 back to the auction and get all your money  
15 back, right?

16 A: Correct.

17 Q: And you chose not to do that, is that ---

18 A: That's right.

19 Q: Okay. Thank you. That's all I have.

20 MR. BOCOOK - RE-DIRECT EXAMINATION BY MR. PORTER:

21 Q: Mr. Bocook.

22 A: Yes, sir.

23 Q: You've been shown as an arbitration policy of  
24 the -- of the auction, right?

25 A: Yes, sir.



1 Q: And counsel went over with you some of its  
2 provisions that deals with your relationship  
3 with the auction, correct?

4 A: Yes, sir.

5 Q: Okay. Does it say anything about the  
6 responsibility of a selling dealer?

7 A: It does.

8 Q: Okay.

9 A: And I'm sure that, again, it clearly outlines  
10 their responsibilities in reference to the  
11 vehicles, you know, that they sell that they  
12 have title for those vehicles.

13 Q: Do you sell vehicles without having title or  
14 knowing where the title status is?

15 A: No, sir, I don't, because I don't want to be  
16 here.

17 MR. PORTER: Nothing further.

18 MR. BOCOOK - RE-CROSS-EXAMINATION BY MR. MARTIN:

19 Q: One follow-up. Isn't it true that you had sold  
20 this car to another person and that's why you  
21 didn't return it to the -- to the auction?  
22 Isn't that true?

23 A: We did sell this vehicle at the auction on  
24 looks like June 16th.

25 Q: So you did sell it before you had the title,



1           isn't that fair to say?

2       A: I'm not sure of the exact date that we received  
3       the title.

4       Q: But you did sell -- you are sure that you sold  
5       it before you got the title, which came on July  
6       12th, correct?

7       A: Okay. If that's the case, then, yes.

8       Q: Okay.

9       MR. MARTIN: No further questions.

10      THE COURT: And we're looking at the year 2016  
11      still?

12      MR. MARTIN: Yes, Your Honor.

13      THE COURT: Anything further?

14      MR. PORTER: No, sir.

15      THE COURT: Are you through with the witness then?

16      MR. PORTER: Yes, he can go back to his business if  
17      counsel has no objection.

18      MR. BOCOOK: Thank you.

19      THE COURT: Mr. Martin, there was Exhibit Number 2 -

20

21      MR. MARTIN: Yes.

22      THE COURT: -- do you -- I had written on there, I  
23      need to keep those if I can.

24      MR. MARTIN: Did I steal it?

25      MR. PORTER: Do you not have a copy?



1 THE COURT: No, sir, he used mine back. I had  
2 written ~~that~~

3 MR. MARTIN: Good catch, Your Honor.

4 THE COURT: Those are very important.

5 MR. MARTIN: Good job.

6 THE COURT: Thank you. Does the State have another  
7 witness at this time?

8 MR. PORTER: Yes, we do. I'd like to, at this  
9 point, if I may, unless there's an objection,  
10 I was going to file Mr. Bocook's complaint and  
11 we have another witness that can authenticate  
12 it, if necessary, and I think this is the same  
13 auction ticket that you submitted.

14 MR. MARTIN: Anything that he's not here to put into  
15 evidence, I would object to.

16 MR. PORTER: Well, that's fine. We can have Mr. ~~one~~

17 MR. MARTIN: Since we're following the letter of the  
18 law and we're here, might as well follow the  
19 law. Nothing personal with my friend over  
20 here.

21 THE COURT: And you'd call who at this time, Mr.  
22 Porter?

23 MR. PORTER: Yes, I'd like to call Zenda Leaks.

24 THE COURT: Ms. Leaks, you've already been sworn in.

25 MS. LEEKS: Yes, sir.



1 ZENDA LEAKS, being duly sworn, testifies as follows:

2 MS. LEAKS -- DIRECT EXAMINATION BY MR. PORTER:

3 Q: Ms. Leaks, state your full name.

4 A: I am Zenda Leaks. L-E-A-K-S, as in Sam.

5 Q: Where do you work?

6 A: I work with the South Carolina Department of  
7 Motor Vehicles, the dealer licensing and audit  
8 unit. I'm the assistant manager.

9 Q: Please describe your duties.

10 A: As the assistant manager of the unit, I help  
11 oversee the day-to-day operations of the  
12 runnings of the headquarters, staff, and  
13 personnel. Also, I oversee the 16 field agents  
14 who are assigned to the -- all of the counties  
15 of the State and all of the dealerships. I  
16 supervise the -- my two people that I  
17 immediately supervise are the two team leads,  
18 but since they in turn supervise the other --  
19 the agents in the field, I'm also responsible  
20 for them, as well. I sign off on the  
21 sanctions, any type of paperwork, send out the  
22 letters, things of that nature when complaints  
23 come in. After the agents have worked those  
24 complaints and sent them back in, I'm the one  
25 who reviews, signs off on them and then go from



1 there. And just customer service, handling  
2 inquiries, helping solve -- troubleshooting  
3 when they've worked on things and the customer  
4 is not satisfied, they come to me, so just a  
5 variety of things along those lines.

6 Q: Who within the dealer licensing unit is  
7 responsible for putting either sanctions or  
8 applications or things like that into the  
9 permanent records of the Department?

10 A: Applications are processed by the personnel.  
11 Well, the initial applications are processed up  
12 in headquarters by personnel up there. We put  
13 them in -- into the official records there.  
14 When dealers renew their applications, it's  
15 generally done in the field offices and then  
16 it's sent to our official records. But we do  
17 receive that. And as far as the sanctions, the  
18 sanctions do come up to headquarters. I sign  
19 off on them and am responsible for them getting  
20 to our official records.

21 Q: Are you responsible for maintaining records  
22 from the past, as well?

23 A: I am.

24 Q: I hand you a set of documents, if you could  
25 tell me what that is.



1 A: These are two different renewals -- renewal  
2 applications for the dealer license. Both of  
3 the applications are MC Automotive,  
4 Incorporated doing business as Toyota of Greer.  
5 And so it's two applications and some attached  
6 documents, a surety bond, along with ---

7 Q: Okay. Look on that first application. Can you  
8 tell what year it applies to?

9 A: This is going to be for 2016.

10 Q: Look at that question one, is there an  
11 indication of effective dates?

12 A: It says June 15, 2015, to June 15, 2016, that's  
13 the surety bond.

14 Q: Okay. Look on that second page.

15 A: Okay.

16 Q: What does question 6 ask?

17 A: Do you have a dealer's manual?

18 Q: What's the indication?

19 A: Yes.

20 Q: All right. Does it indicate who the owners  
21 are?

22 A: It says please see attached spreadsheet.

23 Q: It may not be on that 2015 application, but  
24 look on the 2016 application and see if it  
25 says.



1 A: Yes, it's on -- it's on that one it looks like.  
2 It looks as though as it's on that. Well, I'm  
3 not sure which one, but on the spreadsheet it  
4 does have -- let's see, the president is Mark  
5 S. Goode; vice president is Robert Hogan; and  
6 secretary is Jim Hutchinson.

7 MR. PORTER: I'd like to submit that as the first  
8 Petitioner's hearing exhibit.

9 THE COURT: Any objection?

10 MR. MARTIN: No objection.

11 THE COURT: We'll enter this in as Petitioner's  
12 Exhibit Number 1.

13 (Petitioner's Exhibit Number 1 was admitted into  
14 evidence.)

15 Q: I hand you another document, can you tell me  
16 what that is?

17 A: This is the dealer -- dealer and whole --  
18 dealer and wholesaler manual and it's from --  
19 it's the 2007 version.

20 Q: Could you take a look at page 2-2?

21 A: Yes, sir.

22 Q: What does it state, read that?

23 A: It's talking about the South Carolina  
24 requirements. It says as a dealer you may  
25 provide registration to your customers and it



1 says if you do, you must have a good  
2 understanding of South Carolina requirements.  
3 And it says that a South Carolina resident who  
4 purchases a new or used vehicle must obtain the  
5 South Carolina title and registration within 45  
6 days of purchasing the vehicle. This time  
7 limit is the same whether the customers are  
8 purchasing new license plates or transferring  
9 old ones. And it says if you choose to process  
10 the title registration for your customer, you  
11 must deliver the title and registration to the  
12 customer within the same 45 day period. It  
13 also gives the -- gives the dealer the option  
14 to give the customer all of the paperwork and  
15 maintain a customer signed receipt specifying  
16 that the customer accepts responsibility for  
17 title and registration of -- registering the  
18 vehicle and then that way, that receipt will  
19 show that the dealer did comply with the law  
20 requiring that the vehicle -- that the title be  
21 delivered within 45 days.

22 **MR. PORTER:** I'd like to submit that as the next  
23 exhibit.

24 **THE COURT:** Any objection?

25 **MR. MARTIN:** Other than the fact this is just a



1 manual and not the law, with that objection,  
2 I'm glad to let it in.

3 **THE COURT:** Okay. We are noting the objection. And  
4 we will enter this one in as Petitioner's  
5 Exhibit Number 2.

6 (Petitioner's Exhibit Number 2 was admitted into  
7 evidence.)

8 Q: I had you another document. Can you tell me  
9 what that is?

10 A: This is what we call our sanction history.  
11 We've got dealer history record on it, but  
12 informally we refer to it as the sanction  
13 history.

14 Q: Okay. Can you tell me a little bit about its  
15 contents?

16 A: Sure, this is for -- this is the sanction  
17 history for Toyota of Greer and it has some of  
18 the complaints that we've received and the  
19 violation and what action we took regarding  
20 those violations.

21 **MR. MARTIN:** Your Honor, I would object to anything  
22 other than the three that are subject to this  
23 action.

24 **THE COURT:** Do you want to just make that an ongoing  
25 objection?



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1 MR. MARTIN: That'd be fine.

2 THE COURT: Okay.

3 MR. MARTIN: I'll --

4 MR. PORTER: Would like to point out that counsel  
5 placed into issue that there were only three  
6 instances. What we're trying to show here and  
7 what I believe the law allows is for us to show  
8 a pattern or practice of this dealership in  
9 failing to deliver titles. I challenge counsel  
10 to show anything in the Administrative  
11 Procedures Act that limits a witness with  
12 knowledge from telling about anything relevant  
13 in the case.

14 MR. MARTIN: And, again, what is relevant in this  
15 case under the law is the June 27, 2017, letter  
16 that says, Dear Customer. Here are the three  
17 reasons we are suspending for one week. The  
18 first reason is what happened on July 27, 2016;  
19 the second is what happened on August 8, 2016;  
20 and the third is what happened on June 2nd,  
21 2017. That is what we're here to defend  
22 ourselves today and for him to come through the  
23 back door and try to go on things that are in  
24 the past history -- we've been in business for  
25 15 years. If he wants to talk about what we've



1 done in 15 years, we've had 25,000 sales and  
2 three -- well, 25,000 times, what, five, is 50  
3 -- 75, that's over 125,000 deals and if he  
4 wants to say this list shows a consistent  
5 pattern, we have over 125,000 properly handled  
6 titles and he's got a list of nine that we're  
7 not even getting suspended for, he can be my  
8 guest. But the problem is the law allows us to  
9 defend the exact claim and that claim is in his  
10 letter of June 27. If he wanted to put all  
11 these in issue, he could have put that in his  
12 letter. He did not. And it's totally unfair  
13 and inappropriate for him to try to expand this  
14 into something that we're not here to discuss.

15 **THE COURT:** While we're here, I'm gonna go ahead and  
16 make the ongoing objection for the record. But  
17 I'm gonna go ahead and allow it since we're  
18 here. I can either delete or add as what we  
19 have once I do my order.

20 **MR. PORTER:** Thank you, Your Honor.

21 **(Petitioner's Exhibit Number 3 was admitted into**  
22 **evidence.)**

23 **Q:** Ms. Leaks, tell me the basic gist of the  
24 complaints that are involved in this.

25 **A:** All of them that are listed on here are for



1 failure to deliver.

2 Q: Okay. And they go back a number of years,  
3 correct?

4 A: Correct. Going back to June 30, 2009, and the  
5 most recent, May 20 -- well, the sanction date,  
6 May 25th, 2017. And the sanction date means  
7 that's the date that it gets to headquarters  
8 and it's signed off on.

9 Q: Okay. And does the Department have verbal  
10 warnings any more?

11 A: Not any more. When I first came to the unit,  
12 I came to the unit in October of 2009, but I  
13 was not the assistant manager at that time. I  
14 was the EDR coordinator. In 2011, May of 2011,  
15 I became the assistant manager of the unit.  
16 But before I became assistant manager, we had  
17 switched over from that verbal -- that system  
18 to the point system. It was patterned after  
19 the driver's license where a dealer would get  
20 ~~an~~ once they accumulate twelve points, they  
21 could then have a 7-day suspension. So -- so,  
22 no, we do not have the verbal warning any more,  
23 but we do have the point system.

24 Q: All right. This is the first time that the  
25 Department has sanctioned this dealership,



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1 correct?

2 MR. MARTIN: Objection to leading, Your Honor.

3 Q: How many times has the Department attempted to  
4 sanction this dealership?

5 A: We have -- there are eight complaints on here.  
6 The first complaint was a verbal warning. Once  
7 we went to the point system, the rest of them  
8 have points on them. And so they are  
9 sanctioned, but -- is it okay if I explain how  
10 the point system works?

11 Q: Subject to counsel's objection.

12 MR. MARTIN: Doesn't answer the question.

13 A: What's the question?

14 Q: Could you go in briefly to the sanction point  
15 system?

16 A: Okay. The -- each -- we have -- we have points  
17 -- sanctions -- points range from two points to  
18 six points. Six points is the maximum that we  
19 give on any one sanction. Four points are  
20 given for the failure to deliver. And each  
21 time we -- once we went to the point system,  
22 each time any dealer is sanctioned, a letter is  
23 sent -- a points warning letter or points  
24 notice letter is sent to the dealer informing  
25 them how many points they have against their



1 license. Within the body of that letter, it  
2 tells the dealer---

3 **MR. MARTIN:** I would object to anything about a  
4 letter. That's hearsay, Your Honor. There's  
5 no letter before us in evidence. I can't  
6 cross-examine something that she's talking  
7 about that's a hearsay document.

8 **MRS. PORTER:** It's not hearsay if she made the  
9 document. But I can accommodate counsel this  
10 way.

11 **THE COURT:** I'm gonna go ahead and instead of  
12 holding in abeyance the objection to additional  
13 information that has been in, I'm gonna go  
14 ahead and rule that the -- what we're here for  
15 today is contained in the letter that was dated  
16 June 27th, 2017. I don't think that anything  
17 occurred with Toyota prior to this date has any  
18 bearings other than what we're here for today,  
19 the issues that were stated in the letter of  
20 June 27th, 2017. I don't think counsel with  
21 Toyota has any notes, any knowledge, nothing  
22 was entered into the letter from Ms. Leaks  
23 pertaining to any other letters that had been  
24 sent out. So I'm gonna hold this hearing based  
25 upon the sanctions that were put in the letter



1 on June 27th, 2017.

2 **MR. PORTER:** Mr. Hearing Officer, I must  
3 respectfully disagree. Once again, I don't  
4 think there's anything in the Administrative  
5 Procedures Act that prohibits a witness with  
6 knowledge of a relevant matter and the whole  
7 point of this matter is whether or not the  
8 dealership intentionally sold out of inventory  
9 without having the status of the title  
10 determined, okay. And, you know, I don't know  
11 that I can convince you to change your mind,  
12 but I believe under the existing rules under  
13 the Office of Motor Vehicle Hearings, if I  
14 proffer this evidence, it has to go into the  
15 record at least to the point of having you rule  
16 against it and having it something that can be  
17 determined on appeal and that's why I'm going  
18 to offer this into evidence. Unless I'm  
19 skillful enough to make you change your mind.

20 **THE COURT:** I don't really think that anything that  
21 goes into the record that I would look at in  
22 the past other than if they had been  
23 suspensions in the past.

24 **MR. PORTER:** I understand that and if you ultimately  
25 determine that you can't consider this evidence



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1        ~~HE~~ and I'm not sure what you're looking at  
2        there.

3        **THE COURT:** This is the letter that was sent out.

4        **MR. PORTER:** Okay.

5        **THE COURT:** The notice of suspension that was sent  
6        out. And that's what I'm thinking as far as  
7        this is what counsel came in prepared to  
8        defend, not something that happened in the  
9        past, just the violations that I think in the  
10       dealings that I've had with other violations,  
11       we don't go back and look at what a person did  
12       previously. And maybe I'm out of place on what  
13       I'm fixing to say, but as far as with a DUI.  
14       That I'm only looking at the refusals of it,  
15       not his entire record at that time unless it  
16       comes into play at another time.

17       **MR. PORTER:** Well, Your Honor, once again, they put  
18       in the issue that the violations that we're  
19       challenging them on, the ones that we're  
20       actually sanctioning them on, are (inaudible),  
21       okay, and that's just not true. There's more  
22       -- there's more to the story, and that's what  
23       we're trying to get across.

24       **THE COURT:** But the suspension that the State has  
25       asked for at this time is not one that is



1           pertaining to the past. It's not part of the  
2           record here today based in this letter, am I  
3           correct on that?

4       **MR. PORTER:** That's correct. I mean, we're basing  
5           the suspension that we're asking for on three  
6           separate violations, but the idea that there  
7           are only three violations in play is just  
8           wrong.

9       **Q:** Ms. Leaks, you were talking a little bit about  
10          the sanction policy ---

11       **THE COURT:** I'm gonna go ahead and allow the  
12          testimony to go in, but I'm gonna reserve as  
13          far as my objection to it or your objection to  
14          it in my order. I'll decipher through as far  
15          as what is (inaudible) to the order, whether it  
16          goes in or whether it's omitted.

17       **MR. MARTIN:** Well, if I talk to you for a long time,  
18          would you go back to your original ruling, Your  
19          Honor?

20       **THE COURT:** Well ---

21       **MR. MARTIN:** I mean, I've never seen that kind of  
22          argument done in a court before, but I was  
23          being very patient. But the truth of the  
24          matter is you're absolutely right. It has  
25          nothing to do with this particular suspension.



1 We're looking at is this suspension  
2 appropriate. This is what's on review. This  
3 suspension. Not what happened in 2009 that  
4 we're not prepared to defend. It's just if the  
5 State wants to literally cost me \$2.1 million,  
6 they've got to play by the rules. You made the  
7 appropriate ruling. Just because Mr. Porter  
8 got to argue for another 15 minutes should not  
9 change the rule. The rules are the rules.  
10 They have put us on notice of something very  
11 serious, very serious. And the evidence will  
12 show that we have over \$25,000 --- 25,000  
13 titles handled in this time period. So whether  
14 it's six or whether it's three, there's not a  
15 lot of difference. But the bottom line is how  
16 can I defend what happened in 2009, which is  
17 eight years ago? I don't have witnesses here  
18 to talk about that. And for him to be able to  
19 just put this all in and this lady wasn't even  
20 in the job until 2011. It's just not fair.

21 **THE COURT:** I'm gonna make one final ruling on it  
22 and I'm not gonna accept anything other than  
23 the issues that are mandated within the letter.  
24 I really don't think it's fair to Toyota to  
25 bring up the past that I have no control over



1 what happened during that period of time. If  
2 there were any violations committed during that  
3 period would have been dealt with at that time.  
4 And I think the issues that were placed before  
5 us are the issues that were mandated in the  
6 June 27th, 2017, suspension letter ~~was~~

7 **MR. MARTIN:** Thank you, Your Honor.

8 **THE COURT:** --- that went out.

9 **MR. PORTER:** Yes, Your Honor, and that being said, I  
10 accept that. That's fine, but I still believe  
11 that under the OMVH rules, we are entitled to  
12 proffer the evidence. You are certainly free,  
13 if that's your ruling on the law, to disregard  
14 it and not to take that into consideration in  
15 your ruling.

16 **THE COURT:** And what has been taken into records  
17 will not be used as part of the order.

18 **MR. MARTIN:** Right.

19 **MR. PORTER:** Okay.

20 **MR. MARTIN:** If I may just say, this was a record  
21 that the letter itself, the July 27th, letter,  
22 just make that an exhibit so we know that's in  
23 the record.

24 **MR. PORTER:** No objection.

25 **THE COURT:** And that was part of the record once the



1 case was asked for, that became part of their  
2 record at the Administrative Law Court.

3 **MR. MARTIN:** I just wanted to be sure.

4 **THE COURT:** So it's already part of the record.

5 **MR. PORTER:** I'd like to submit that as a proposed  
6 exhibit, which I understand -- well, I mean,  
7 certainly the last three are relevant because  
8 they are the ones that were noticed, but we'd  
9 like to submit that as the proposed --

10 **THE COURT:** And counselor has -- you have --

11 **MR. MARTIN:** We have a copy.

12 **THE COURT:** Okay. The last three are the ones that  
13 are within the play. The '16 --

14 **MR. PORTER:** Well, there's some -- some -- there's  
15 some verbiage there on one that was disregarded  
16 by the Department and that is not being  
17 counted.

18 **THE COURT:** We'll go ahead and enter this in as an  
19 exhibit. Any objection?

20 **MR. MARTIN:** Subject to your ruling, Your Honor.

21 **THE COURT:** Okay. Only use the violations that  
22 pertain to the notice of suspension that was  
23 sent out and we'll enter this in as  
24 Petitioner's Exhibit Number 3.

25 **MR. PORTER:** Number 3.



1 THE COURT: Number 3, yes, sir.

2 (Petitioner's Exhibit Number 3 was admitted into  
3 evidence.)

4 MR. PORTER: And understanding as I do your ruling,  
5 sir, I'd still like the witness to -- I'd like  
6 to be able to proffer the next exhibit, which  
7 is on the same line.

8 Q: I think I've given you -- yes, could you state  
9 for the record what you're holding, Ms. Leaks?

10 A: These are our what we call our points warning  
11 letters.

12 Q: Okay. How many are there?

13 A: I have five.

14 Q: Okay. What are the dates?

15 A: The, I guess, earliest goes back to May 5th --  
16 I'm sorry, May 3rd, 2012. There's one dated  
17 October 23rd, 2012; July 3rd, 2014; February  
18 5th, 2016; and August 2nd, 2016.

19 Q: What's the gist of the letters?

20 A: It tells the dealer how many sanctions they've  
21 received and the total number of points --  
22 total number of points against their dealer's  
23 license and it also tells what the violation  
24 is. It tells when the -- when the sanction was  
25 posted, how many points, what complaint is



1 referenced, and what the violation is. And it  
2 mentions that an accumulation of twelve points,  
3 they -- the dealer will get a suspension letter  
4 for seven days for the first accumulation of  
5 twelve points, 30 days for a second  
6 accumulation of twelve points, and a third  
7 accumulation would result in revocation.

8 Q: And just to be clear, when you're talking about  
9 sanctions, if you assign points, the assignment  
10 of points doesn't ~~in itself cause the~~ dealer to  
11 be suspended or revoked or anything else,  
12 right?

13 A: No.

14 MR. MARTIN: Again, Your Honor, he's leading his  
15 witness. This is not his time to testify; it's  
16 her time. I would object to leading.

17 Q: Well, describe if you will the sanction points  
18 policy we were in that when we got into this  
19 discussion.

20 A: Again, sanction points are accumulated; a  
21 letter is sent to the dealer letting the dealer  
22 know how many points have been assessed against  
23 the dealer license. One set of four points,  
24 that -- one sanction itself, no, will not  
25 trigger a suspension. The dealer has to



1 accumulate twelve points. And the way this  
2 point system is set up, after a year, if a  
3 dealer -- let's just use -- today is October  
4 2nd, 2017. Let's just use October 2nd, 2016.  
5 If a dealer was sanctioned, given a four point  
6 sanction on October 2nd, 2016, as of October  
7 2nd, 2017, those four points would be reduced  
8 to two points. So after -- and then this time  
9 this next year, those two points would come  
10 off. So each year, depending on -- well,  
11 basically, every two years, the dealer has an  
12 opportunity for whatever they -- even a six  
13 point sanction to be completely taken up.  
14 Well, it won't be held against them after two  
15 years, so regardless of how any sanctions are  
16 on our sanction history, all of them are not  
17 used because, you know, it's kind of like a  
18 sliding scale, you do some subtraction and that  
19 type of thing. In fact, two of them that we're  
20 looking at today, if we had not received this  
21 third sanction, we wouldn't even be here  
22 because they would have been -- each one would  
23 have been reduced to two points and that would  
24 have been four points, so even if this sanction  
25 had come in, the dealer would have only been



1 looking at eight points and we wouldn't -- we  
2 wouldn't be here.

3 Q: So how many points does it take to get any kind  
4 of suspension for revocation?

5 A: It takes twelve points to get a seven-day  
6 suspension. If a dealer accumulates a second  
7 set of twelve points within a three-year  
8 period, then that's grounds for a 30 day  
9 suspension. After the 30-day suspension, if  
10 the dealer accumulates a third set of twelve  
11 points within three years, then -- this is a  
12 fresh set of twelve, they're not continuously  
13 used from one action to the next, so it's three  
14 individual sets of twelve, so after that third  
15 set of twelve, then we would seek revocation  
16 against the dealer.

17 Q: May I have the other one?

18 MR. PORTER: Again, subject to your ruling, we'd  
19 like to proffer this as the next hearing  
20 exhibit.

21 THE COURT: Any objection?

22 MR. MARTIN: This is something that has to do with  
23 temporary license plates, but we're here on the  
24 point system, so I don't see the relevance to  
25 this case.



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1 MR. PORTER: I'm sorry, let me see what ---

2 MR. MARTIN: We're not noted with any problem  
3 dealing with temporary license plates.

4 MR. PORTER: I gave you the wrong thing. I'm sorry.  
5 That's the sanction policy. I don't know how  
6 this got in there. I didn't mean to confuse.  
7 This is -- this is the letters that Ms. Leaks  
8 was testifying to. Counsel, I think, has an  
9 objection. I think the most recent of them  
10 would be relevant to this case because they  
11 deal with -- they deal with complaints.

12 THE COURT: The first two pages are showing they're  
13 on February 2nd, 2016, and July 27th, 2016,  
14 those are the two you're referring to, Mr.  
15 Porter?

16 MR. PORTER: Yes, sir.

17 THE COURT: Okay. And, again, we proffered them all  
18 as we believe them to be relevant evidence.  
19 But, again, subject to your ruling, we  
20 certainly also submit them for the ones that  
21 are -- that are directly relevant to this  
22 hearing today.

23 THE COURT: I'm gonna take the package, but we'll  
24 only look at the ones that are relevant here  
25 today and we will enter that in as Petitioner's



1 Exhibit Number 4.

2 (Petitioner's Exhibit Number 4 was admitted into  
3 evidence.)

4 MR. PORTER: Your indulgence, Your Honor.

5 THE COURT: Okay.

6 Q: All right. To your knowledge, has anyone from  
7 the Department ever met with the dealership?

8 A: Yes.

9 Q: When was that?

10 A: Let her see, oh -- around this time last year.  
11 It was going back then, some. We -- we had  
12 accumulated -- the dealership had accumulated  
13 twelve points and we were looking at doing a  
14 seven-day suspension. My immediate supervisor,  
15 there was some details within one particular  
16 complaint that he felt the customer contributed  
17 to the problem and getting the title -- the  
18 failure to deliver, so at that point, we did  
19 not move forward with sending a notice of  
20 suspension. Instead, my immediate boss Carl  
21 Clary asked us to schedule a meeting --

22 MR. MARTIN: Your Honor, I would object to any  
23 hearsay of what someone else did. She can  
24 testify to what she did, but we're here to --  
25 I can't cross-examine this lady who she's



1 talking about.

2 A: It's a he.

3 THE COURT: Correct. We cannot accept any hearsay.

4 A: Well, I was explaining that to get to the point  
5 of when we met he asked did we have a meeting  
6 and so ---

7 MR. MARTIN: I'm perfectly -- she can say that she's  
8 had a meeting and she heard things. She can  
9 certainly testify to what she did ---

10 A: Okay. (Inaudible)

11 THE COURT: Anything that's said and then is  
12 hearsay, we can't accept.

13 A: Okay. Okay. On October 11, 2016, Agent Jason  
14 Benjamin, his supervisor, Lisa Byrd, and I met  
15 with the owners and several other officers of  
16 the dealership and the people who were there  
17 were Bob Hogan, Jeff -- Jed Holtsman (ph),  
18 Angie (inaudible), Jim Hutchinson, and Russell  
19 Antici. I don't know how you pronounce his  
20 last name. So yes, we did have a meeting with  
21 personnel from the dealership to discuss their  
22 -- their accumulation of points and where we  
23 were in the process and look at ways to avoid  
24 where we are today.

25 Q: So what did the Department state needed to



1           happen?

2           A:   Well, we told them that in order to not -- at  
3           that time, we let them know that they still had  
4           two -- they had eight points against their  
5           license, one more sanction would trigger a  
6           seven-day suspension. They assured us that  
7           they wanted to avoid that and they would do --  
8           do whatever they could to not let that happen.  
9           And we also told them then and I will tell any  
10          dealer, franchise dealer, independent dealer,  
11          whoever, we're not in the business of trying to  
12          put anybody out of business. And we strongly  
13          encouraged them to talk with their dealer  
14          agent. I tell them all the time, that's what  
15          your dealer agent is here for, to work with  
16          you, help you. Nobody's trying to put anybody  
17          out of business. If I didn't have to do these  
18          sanctions, my job -- my life would be a whole  
19          lot easier. I'd rather not see any sanctions  
20          cross my desk to be perfectly honest with you.  
21          But, you know, I did get the impression that  
22          they were going to try and do everything to  
23          correct the problems that they were having and  
24          not getting the problems that they were having  
25          with getting these titles delivered.



1 Q: Was there any discussion on having titles or  
2 knowing the status of titles in this meeting?

3 A: That I don't recall. We have to ask Jason or  
4 Lisa.

5 Q: Since you've been in that Department, have any  
6 other franchise dealers been sanctioned in that  
7 sense of being suspended or noticed for  
8 suspension by the Department?

9 A: Yes, we have sanctioned and sent point warning  
10 letters to other franchise dealers when they  
11 have points assessed against their license. We  
12 have not reached the point where we've sent a  
13 suspension notice because that generally gets  
14 their attention. They will contact us asking  
15 what needs to be done, what can be done, and  
16 they will generally go ahead and make sure that  
17 nothing happens that they will accumulate  
18 enough points to get a suspension, so -- so,  
19 yes, we've sanctioned, but sent a notice of  
20 suspension, no.

21 Q: So when you say sanctioned, what does that  
22 mean?

23 A: We receive a complaint against the dealership  
24 for a failure to deliver. The customer has  
25 submitted a complaint saying that they bought



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1 a car from franchise dealer A and have not  
2 received their title, so when the agent goes in  
3 and does the investigation and determines that  
4 the title has not been delivered or that it was  
5 delivered well past the 45 days and we use  
6 discretion. Generally, if a title is  
7 delivered, say, five days past the 45 days, we  
8 generally will not sanction. When you start  
9 getting into the ten, fifteen -- ten and above,  
10 then, yeah, we do look at that. But, you know,  
11 we do try and give leeway and that's with all  
12 dealers. We try as much as possible to treat  
13 all dealers the same. And so whatever the  
14 complaint is and we get -- you know, they can  
15 be sanctioned for displaying off premises, just  
16 a variety of things. So it's not always  
17 failure to deliver, but that's one of the  
18 things. That's generally -- probably the main  
19 complaint that we get pertaining to dealers  
20 whether it's franchise or independent.

21 **MR. PORTER:** No further questions.

22 **THE COURT:** Cross-examination?

23 **MS. LEAKS -- CROSS-EXAMINATION BY MR. MARTIN:**

24 **Q:** Ms. Leaks, thank you for coming today. Now, I  
25 am not a full-time motor vehicle employee, so



1 if I get things wrong, would you please correct  
2 me?

3 A: I will do my best.

4 Q: Thank you. I understand the point system is  
5 sort of like with your license, right?

6 A: Yes, sir.

7 Q: Not that I ever get speeding tickets that I  
8 would know about that either, but I do have a  
9 son. So I am familiar with the process thanks  
10 to my son. But I understand that you said that  
11 if one year goes by after a violation, two  
12 points fall off, is that right?

13 A: Yes, sir.

14 Q: So we're here because we hit the magic number  
15 twelve?

16 A: Yes, sir.

17 Q: Doesn't matter if you sell 25,000 cars or five  
18 cars, if you hit twelve, that's it, right?

19 A: Yes, sir.

20 Q: Now, the first violation in your letter is  
21 dated July 27th, 2016, correct?

22 A: Okay.

23 Q: Is that right?

24 A: Yes, sir.

25 Q: So on July 27th, 2017, two points fell off?



1 A: Correct.

2 Q: So as of today, Toyota of Greer has ten, not  
3 twelve, points, is that fair to say?

4 A: They should have eight because ---

5 Q: Eight, okay. So would you agree with me that  
6 eight is not enough to sanction?

7 A: I -- I would, yes.

8 Q: Okay. All right. Now, the next question I  
9 have is on this document that's called the  
10 ~~State~~ -- South Carolina Department of Motor  
11 Vehicles Procedure DE-002 Dealer Sanctions, on  
12 page six of ten, it talks about willful failure  
13 to deliver a title, does it not?

14 A: Yes, sir.

15 Q: Okay. I'm gonna read this and you please tell  
16 the Court if I read it incorrectly, all right.  
17 It says, willful failure to deliver title  
18 complaints. Dealers are required to execute an  
19 assignment of title to the buyer and deliver  
20 the title to the buyer or the DMV within 45  
21 days of the date of sale. Did I read that  
22 correctly?

23 A: Yes, sir.

24 Q: And then it says the quote, failure to deliver  
25 title violation, end quote, is not considered



1 willful if the dealer can provide a witness  
2 statement which is substantiated by a dealer  
3 licensing and audit unit agent identifying a  
4 prior seller or lien holder who has failed to  
5 deliver the title as required by law. Did I  
6 read that correctly?

7 A: Yes, sir.

8 Q: It is considered a willful failure to deliver  
9 title in the case with a dealer who cannot  
10 obtain a title because the dealer has sold out  
11 of trust. Did I read that correctly?

12 A: Right.

13 Q: So, basically, what this saying is is you can't  
14 say it's a willful violation if the dealer can  
15 show that it wasn't their fault that the title  
16 didn't get delivered, is that a fair statement?

17 A: It's -- that seems to be a fair statement.

18 Q: Okay. Thank you. Now, let's look at the first  
19 violation that got us to the magic number of  
20 twelve. You had a meeting in October with our  
21 friends at Toyota of Greer, is that right?

22 A: October of 2016, yes, sir.

23 Q: Yes, October. We haven't had October 11th yet

24 ---

25 A: Not yet.



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1 Q: --- this year. Not yet.

2 A: We've got October.

3 Q: One day before Columbus Day, right? So the  
4 first one was a situation where Ford Motor  
5 Credit had a lien still showing on the title,  
6 correct? And the dealership could not get a  
7 duplicate title from the DMV, right? And our  
8 people told you Ford Motor Credit was  
9 contacted. They're the ones that told us that  
10 that -- that loan was actually paid off four  
11 years earlier and it wasn't our fault and we  
12 kept dogging 'em and dogging 'em and dogging  
13 'em and we finally got it. Is that fair to  
14 say? Ford Motor Credit had the lien still  
15 showing. It was paid off in 2012, but they had  
16 some office exchange and they couldn't get us  
17 a copy. And, of course, they weren't motivated  
18

19 A: What are you looking at?

20 Q: I'm looking at the first deal ---

21 A: Would you flip it around so I just need to see  
22 what you're looking at.

23 Q: I'm looking at my notes.

24 A: Oh, your notes, okay.

25 Q: Okay. But I'm talking about the first deal,



1 the March 29th, 2016, deal where Sheila Gilliam

2

3 A: Oh, okay. I've got that quote.

4 Q: --- Sheila Gilliam, she bought a nine year-old  
5 car, right?

6 A: Uh-huh.

7 Q: And it showed that as of January 25th, 2016,  
8 she told us that the lien was paid off and  
9 that's what Toyota of Greer told you and said  
10 Ford Motor Credit had to get you a letter and  
11 it took them forever to finally get you the  
12 letter, right?

13 A: No.

14 Q: That's what happened on the first one, correct?

15 A: No.

16 Q: No?

17 A: The letter that we -- the statement that we  
18 have from the title clerk does not say -- it  
19 says the vehicle was traded into our dealership  
20 by the previous owner on January 25th, 2016,  
21 without a title. There was an issue in getting  
22 the title from Ford Motor Credit. Our pay-off  
23 clerk who was in charge of getting duplicate  
24 title had been working with Ford Motor Credit  
25 for a while and finally got a title rep to fax



1 a lien release directly to the DMV on our  
2 behalf in order to get the duplicate title on  
3 July 5th, 2016.

4 Q: Okay.

5 A: So some of the stuff that you're saying no, we  
6 ---

7 Q: So you ---

8 A: I never saw that.

9 Q: You knew that Ford Motor Credit was the  
10 problem, correct? You knew they had the fax,  
11 the payoff on that lien in order to get the  
12 duplicate title, right?

13 A: According to the statement that the title clerk  
14 wrote.

15 Q: All right. And that was in writing, right?

16 A: Correct.

17 Q: And your own rules say the failure to deliver  
18 a title violation is not considered willful if  
19 the dealer can provide a written statement,  
20 which is substantiated by a dealer licensing  
21 and our unit agent identified a prior seller or  
22 lien holder who has failed to deliver title as  
23 required. Did I read that correctly?

24 A: You did.

25 Q: So isn't that true that this one was a problem



1 where the lady who sold the car and said, I  
2 paid that loan off four years ago, call Ford  
3 Motor Credit and you were told Ford Motor  
4 Credit finally got around to doing it. So,  
5 under that, that can't be a willful violation,  
6 can it, under your own rules, right?

7 A: That's what it -- that's what it ---

8 Q: That's what it says, right?

9 A: That's what it says.

10 Q: So if this one falls off, the twelve points  
11 goes to eight points, right?

12 A: Well, it hasn't fallen completely off, though.

13 Q: If it's not willful, it falls off, right?

14 A: Correct.

15 Q: So twelve minus four equals eight, correct?

16 A: Correct.

17 Q: And we wouldn't be here today, correct?

18 A: If they had eight points, we would not be here  
19 today.

20 Q: Exactly. All right. Well, let's look at the  
21 second. Okay. I'm sorry. Get my ducks in  
22 order. The second one was February 26, 2016,  
23 correct? That was the (inaudible) Mr. Bocook,  
24 right?

25 A: Yes.



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1 Q: Okay. And Mr. Bocook was honest in the cross-  
2 examination and he admitted that he bought this  
3 car from the auto auction and not Toyota of  
4 Greer, right? You were here and heard that  
5 testimony, correct?

6 A: Yes, sir.

7 Q: And, therefore, he also bought it on a blue  
8 light, which meant title attached, which would  
9 mean it was sold without the title, correct?

10 A: According to what he said.

11 Q: According to what he said. So he knew he was  
12 buying a car and it wasn't going to be final  
13 under the auction rules until that title was  
14 delivered, right?

15 A: Based on what he said.

16 Q: Yeah. And he said that he got it on July 16th,  
17 I think, of 2016 or July 12th, 2016, right?

18 A: I don't remember the date that he said.

19 Q: So that's -- so if he got it, that's certainly  
20 within the 45 days of the final sale under the  
21 auction rules, correct?

22 A: Right.

23 Q: So that wouldn't be a violation either, would  
24 it? Wouldn't be a willful violation, right?

25 A: I'm sorry; repeat -- repeat your question.



1 Q: Okay.

2 A: And, of course, the dates.

3 Q: Mr. Bocook said that he got the title on July  
4 12, 2016.

5 A: Right.

6 Q: The auction says if you buy a car under blue  
7 light when you don't have the title, you got  
8 two choices, (a) give the car back or (b) wait  
9 for the title. So the deal was final when he  
10 got the title under the auction rules, correct?  
11 The way he described it to all of us.

12 A: And I think he also said, if I remember  
13 correctly, he read that the agreement said a  
14 reasonable amount of time.

15 Q: That's right.

16 A: And I know that's subject, but ...

17 Q: And he had a choice. If he thought it was  
18 unreasonable, he could give the car back and he  
19 didn't do that. He'd get his \$300 back, right,  
20 but he chose to wait. And under the auction  
21 rules, if you choose to wait, the deal is final  
22 when you get the title when it's under a blue  
23 light, right, that's what he said?

24 A: Within a reasonable amount of time.

25 Q: Yeah. And on July 12th, 2016, he got his title



1 and, therefore, it's not a violation of the 45  
2 day rule, would you agree with me?

3 A: Not necessarily because I think reasonable, you  
4 know, I'm not sure that based on the way he was  
5 talking, he's gone, I can't talk for him, but  
6 I'm not sure that five months would be  
7 considered a reasonable amount of time.

8 Q: Okay. Now, when you met with my folks on  
9 October 11th, 2016, you discussed this Carolina  
10 Title loan that was on Mr. Bocook's car, right?  
11 And you found out that Carolina Title Loans is  
12 one of these title loan companies for people  
13 who buy a car, they have to give their title so  
14 they have a -- some authority to make sure they  
15 pay their payments, right? Correct?

16 A: Are you asking me correct about the title?

17 Q: Yeah.

18 A: What the title loan company does?

19 Q: Yes, isn't that what the title loan company --  
20 isn't that your general understanding what it  
21 --

22 A: It's my understanding that the title loan  
23 company, that's why they're called that, they  
24 get the title.

25 Q: That's right. That's right.



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1 A: They get the title.

2 Q: You don't want to mess with those people. So,  
3 you knew once again that this was a situation  
4 where the title was with Carolina Title and  
5 they kept saying, oh, no, the Greer office --  
6 the Spartanburg office doesn't have the title,  
7 but the Greer office has the title and the  
8 lady's on vacation and it took them forever to  
9 get them the title. Would you agree with that?  
10 That's what the explanation was by Toyota of  
11 Greer in writing to you on your meeting, right?

12 A: Not at -- not to the meeting. It was the  
13 statement that the ---

14 Q: Okay. The statement.

15 A: --- wholesale clerk provided.

16 Q: Okay. So we knew once again it wasn't a Toyota  
17 of Greer issue; it was a Carolina Title issue  
18 and your own document says the failure to  
19 deliver title violation is not considered  
20 willful if the dealer can provide a written  
21 statement which is substantiated by the dealer  
22 license and auto unit agent identifying a prior  
23 seller or lien holder who has failed to deliver  
24 the title as required by law, correct?

25 A: That's what it says.



1 Q: So, twelve minus four is eight; eight minus  
2 four, we're down to four, aren't we?

3 A: Correct.

4 Q: Let's look at deal number three. Deal number  
5 three was February 10th, 2017, right?

6 A: Yes.

7 Q: Correct?

8 A: Correct.

9 Q: Okay. And what you have in the written  
10 statement was that the fellow who bought the  
11 car when he traded it in said I'll get my  
12 title, right? And he didn't do it. So then we  
13 contacted the South Carolina CVR, right?  
14 Computerized Vehicle Registration records,  
15 right. And we showed that that car was owned  
16 by someone else, not him.

17 MR. PORTER: Counsel's testifying.

18 Q: Isn't that right?

19 MR. MARTIN: I'm not testifying.

20 MR. PORTER: Objection.

21 MR. MARTIN: I am cross-examining the witness, which  
22 I'm allowed to do.

23 Q: Isn't that correct?

24 THE COURT: Go ahead and allow the question.

25 A: According to the statement it says the customer



1 listed was not the customer who had traded the  
2 vehicle in.

3 Q: Right. And then they finally got a hold of  
4 this fellow and he said, oh, I had that car  
5 titled in North Carolina and that's why we  
6 couldn't find it under the South Carolina list,  
7 isn't that what you were told?

8 A: That's not made clear in this statement.

9 Q: Well, that's what you understood, wasn't it?

10 A: Not from the statement, no.

11 Q: What does the statement say? Read me the  
12 statement.

13 A: Let's see, Ms. Tonya McAlister purchased a 2006  
14 Mazda RX-8, I'm not gonna read the VIN, on  
15 February 10th, 2017. This vehicle was traded  
16 into our dealership on January 3rd, 2017. The  
17 previous owner had lost the title and stated  
18 would get us a duplicate himself. We have  
19 pulled an inquiry through the CVR system and  
20 we're going to attempt to apply for the  
21 duplicate ourselves. However, the customer  
22 listed was not the customer who had traded the  
23 vehicle in. We made several attempts to  
24 contact the previous owner with no responses  
25 until mid April. We were made known that the



1 title was, in fact, a North Carolina title, not  
2 a South Carolina title, and had a lien listed  
3 on it, as well. We received the lien release  
4 from the previous lien holder and promptly  
5 applied for the North Carolina duplicate on  
6 April 21st, 2017. We received a duplicate  
7 title in the mail on May 11th, 2017. We  
8 attempted to walk the tag through the local DMV  
9 branch on May 12, 2017, only for it to be  
10 rejected due to the vehicle having a tag stop  
11 on it. I attempted to contact Ms. McAlister to  
12 see if she had a paid tax receipt or if she  
13 wanted to purchase (inaudible) with no response  
14 back. On May 15th, 2017, we walked the tag  
15 work through the DMV as a title only to satisfy  
16 the lien holder. As of May 16th, 2017, we  
17 still -- we have still not heard back from Mrs.  
18 McAlister.

19 Q: Okay. So what we have here is a failure to  
20 deliver the title by the previous owner, right?

21 A: The vehicle -- the owner traded -- he traded in  
22 so -- to it and did not give the dealership the  
23 title ---

24 Q: Right.

25 A: --- when the deal was completed on the day it



1 was completed.

2 Q: So under your own rules, the failure to deliver  
3 title violation is not considered willful if  
4 the dealer can provide a written statement  
5 which is substantiated by dealer licensing and  
6 audit unit agents identifying the prior seller  
7 who has failed to deliver the title as required  
8 by law, correct?

9 A: That's what -- that's what's written.

10 Q: So that can't be willful either, right? So we  
11 go from twelve minus four, gets us to eight;  
12 eight minus four gets us to four. Now we've  
13 got four minus four, so we're at zero, aren't  
14 we? There's been zero willful violations.  
15 Would you agree with me under your own rules?

16 A: No.

17 Q: No. Okay. Thank you I have no other  
18 questions.

19 MR. PORTER: Your Honor, may I have -- I think you  
20 said it was part of the -- the record, the  
21 notice itself?

22 THE COURT: It's actually three pages, that's part  
23 of the record.

24 MS. LEAKS - RE-DIRECT EXAMINATION BY MR. PORTER:

25 Q: What is that document, Ms. Leaks?



1 MR. MARTIN: Your Honor, I would just like to say  
2 that unless he can lay a foundation, this is  
3 reply. He has the right to introduce evidence  
4 on direct, which he did not introduce this  
5 letter on direct. And he can only deal with  
6 replying to the cross-examination. So I would  
7 object to any letter that would have to do that  
8 should have been introduced on direct.

9 MR. PORTER: The Hearing Officer's already stated  
10 this is automatically part of the record.

11 THE COURT: That was part of the record that was  
12 submitted with the request and you may go  
13 forward.

14 Q: What is that document?

15 A: This is the notice -- notice of suspension  
16 letter that was sent to Toyota of Greer and  
17 it's dated June 27th, 2017.

18 Q: All right. What would be a year before that  
19 date? I'm sorry, a year from that date.

20 A: A year from June 27th, 2017, it would be June  
21 27, 2018.

22 Q: So, counsel has asked you questions, has he  
23 not, about points falling off?

24 A: Yes, sir.

25 Q: When exactly do points fall off?



1 A: A year after one year from the initial date of  
2 sanction.

3 Q: But within a year hadn't the Department already  
4 given a notice that there were sanctions to be  
5 done on this, these particular complaints?

6 A: Correct.

7 Q: Okay.

8 A: And may I add that that letter got -- the  
9 violations that we list, nothing says willful  
10 in that notice that we gave. We never --  
11 nothing is in that letter that said willful.

12 Q: Okay. Now, all of this, who is it that sold  
13 these vehicles?

14 A: Toyota of Greer.

15 Q: Okay. And if somebody told them a story about  
16 whether they had a title or not, whose  
17 responsibility is that when they sell it to  
18 someone else?

19 A: It's the dealership's responsibility.  
20 Ultimately, the dealership has 45 days to  
21 register a vehicle. That's what the law says.  
22 It has to be registered within 45 days so  
23 regardless of where -- where it was, it's the  
24 dealership's responsibility to know the history  
25 of the car, where the title is, if there are



1 any issues with it or anything along those  
2 lines.

3 Q: So does anything depend on the dealership's  
4 state of mind as to those 45 days?

5 A: I'm not sure I understand the question.

6 Q: Is the 45 days an absolute requirement, to your  
7 understanding?

8 A: Yes, state law 45 days are an absolute  
9 requirement. And, as I said, we do give leeway  
10 generally. If it's within five days past the  
11 45 days, we generally will not sanction. So we  
12 do give a little bit of leeway past that 45  
13 days.

14 Q: Do you recall on these particular complaints,  
15 how many days had elapsed?

16 A: Let's see, in the one submitted by Ms.  
17 McAlister, that one was 94 days over the 45  
18 days. The one Mr. Bocook's, it was 143 over  
19 the 45 days. And Ms. Gilliam, it was within --  
20 let's see, 99 days, so it took 99 days for it  
21 to be titled, so that was probably about 40 --  
22 another 44 past the 45 days.

23 Q: So, counsel I think was questioning you and  
24 saying that obviously they were scrambling  
25 around ---



1 **MR. MARTIN:** Objection to leading, Your Honor. He  
2 can't repeat what I've said. He can only ask  
3 direct questions and I would ask that he follow  
4 the witness.

5 Q: Counsel asked you, did he not, or I believe he  
6 read form the sanction policy ---

7 A: He did.

8 Q: --- or the procedures regarding the situation  
9 that under the rule it would called willful.

10 A: Yes.

11 Q: And he said it could not -- did he not say  
12 could not be willful?

13 **MR. MARTIN:** Your Honor, again, he's repeating my  
14 testimony. I didn't testify. I just asked  
15 questions. He can ask his witness questions,  
16 but they have to be direct questions. They  
17 can't be leading questions. This is his  
18 witness.

19 Q: Would you read number two on that page, please?

20 A: Willful failure to deliver title complaint.  
21 Dealers are required to execute an assignment  
22 of title to the buyer and deliver the title to  
23 the buyer or the DMV within 45 days of the date  
24 of sale. The failure to deliver title  
25 violation is not considered willful if the



1 dealer can provide written statement which is  
2 substantiated by a dealer licensing and dealer  
3 agent identifying a prior seller or lien holder  
4 who has failed to deliver the title as required  
5 by law.

6 Q: Stop there. Okay. Did you get any indication  
7 from the dealer agent that he had ratified or  
8 had found anything about these delays that were  
9 excusable?

10 A: No.

11 Q: And who drafted that notice?

12 A: The suspension notice?

13 Q: Yes.

14 A: I did.

15 Q: Did you mention anything about willful failure?

16 A: I did not.

17 Q: What did it say, do you recall?

18 A: The violations that are listed -- may I hold it  
19 for a second?

20 Q: The suspension notice.

21 **THE COURT:** This is on the suspension notice. I'm  
22 gonna give you the two pages since the last  
23 page is nothing but just signatures.

24 A: This letter outlines -- it gives the post  
25 dates, the points, the reference number and the



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1 violation, and the violation says engaging in  
2 any action that causes damage to any part or to  
3 the public, and in parentheses, it says failure  
4 to deliver the title within 45 days of date of  
5 sale, and that's what all three of the  
6 sanctions say. None of them accuse the dealer  
7 of willfully violating.

8 Q: And after 45 days, can they -- an owner of a  
9 car drive legally with that car?

10 A: You cannot.

11 Q: And I think counsel admitted the auction rules.

12 MR. MARTIN: Again, I'd object to him talking about  
13 me. He can ask her a direct question. I'm  
14 flattered, but ...

15 MR. PORTER: Happy to oblige. If I may have that --

16 -

17 THE COURT: I think Exhibit Number 2, the ---

18 Q: Can you recognize that?

19 A: This is from America's Auto Auction. It's the  
20 national arbitration policy for in-lane and on-  
21 line.

22 Q: Does the Department much care about the rules  
23 of the auction?

24 MR. MARTIN: Objection to leading, Your Honor.

25 MR. PORTER: Just because it's a yes or no question



1 doesn't mean it's necessarily leading.

2 **THE COURT:** I'm gonna allow the question.

3 **A:** No.

4 **Q:** What is the Department applying?

5 **A:** The Department is applying the law that  
6 requires the vehicle has to be titled and  
7 registered within 45 days from the date of  
8 sale.

9 **MR. PORTER:** No further questions.

10 **MR. MARTIN:** Just a few follow-up, Your Honor.

11 **THE COURT:** Okay.

12 **MS. LEAKS - RE-CROSS-EXAMINATION BY MR. MARTIN:**

13 **Q:** Ms. Leaks, don't you agree, you don't make the  
14 law; you just apply it?

15 **A:** Yes, sir.

16 **Q:** So if the law says it has to be a willful  
17 violation, you can't just say well, I'm just  
18 gonna leave that word out and change what the  
19 legislature did, can you? You can't do that,  
20 can you?

21 **A:** Well, in that case, I guess technically we  
22 can't give leeway for -- of the 45 days, then.

23 **Q:** Please answer my question. Can you just  
24 literally say I'm gonna whack these people with  
25 four points even if it's not willful? Can you



1 do that?

2 A: I guess not.

3 Q: Okay. Do you agree with me that under your own  
4 procedure, DE-002, it says the failure to  
5 deliver a title violation is not considered  
6 willful if the dealer can provide a written  
7 statement which is substantiated by a dealer  
8 license and audit unit agent identifying a  
9 prior seller or lien holder who has failed to  
10 deliver the title as required by law?

11 A: That's what it says.

12 Q: And then you've got a -- you've got a charge on  
13 the back of this same document, let me get to  
14 it --

15 MR. MARTIN: Can you ask counsel to sit down; he's  
16 making me a little nervous.

17 MR. PORTER: Is this a presidential debate?

18 MR. MARTIN: Yeah, I feel a little bit like Hillary  
19 Clinton here.

20 Q: And it's on -- it starts with fraud and other  
21 offenses and it's the bottom one, it says  
22 willful failure to deliver title to buyer or  
23 Department within 45 days of date of sale, did  
24 I read that correctly? One, two, three, four,  
25 five, six, seven, eight, nine, ten, eleven,



1 twelve, thirteen, it's on page 13 of a 14 page  
2 document. Now, do you have the actual one  
3 that's the Court's exhibit?

4 A: (Inaudible)

5 Q: I'm looking for the one entitled South Carolina  
6 Department of Motor Vehicles Procedure DE-002  
7 Dealer Sanctions.

8 THE COURT: Would that be under the manual?

9 MR. MARTIN: No, it's a separate document that's  
10 been admitted into evidence.

11 Q: Well, let me see your copy and maybe I can help  
12 you find it since you're not familiar with what  
13 we're talking about.

14 A: I'm familiar with it and it's not in there.

15 Q: It's just not in here; you didn't copy it?  
16 Okay. Well, why don't we just read off of my  
17 copy. Would you agree that this is a proper  
18 valid chart of what your rules are?

19 A: Right, it is.

20 Q: Okay. And would you read the last entry for  
21 the record, please?

22 A: Willful failure to deliver title to buyer or  
23 Department within 45 days of date of sale.

24 Q: And how many points?

25 A: Four.



1 Q: Okay. So that also requires a willful failure,  
2 does it not?

3 A: Correct.

4 Q: And just because you don't put it in a letter,  
5 you can't change what your rules are, can you?

6 A: Correct.

7 Q: Okay.

8 MR. MARTIN: No further questions.

9 MR. PORTER: Just -- I'll give it back to you,  
10 apparently it's wrong -- wrong one, but I did.

11 MS. LEAKS - RE-DIRECT EXAMINATION BY MR. PORTER

12 Q: Ms. Leaks, are there any circumstances that  
13 you're aware of that a particular violation can  
14 be more than one on (inaudible)?

15 A: I am. There's a sanction for multiple  
16 violations from a single (inaudible) complaint,  
17 and that would be six points.

18 Q: Well, let me ask you this, does the Department  
19 have instances where so called sold out trusts?

20 A: Yes.

21 Q: What does that mean to you?

22 A: When a vehicle's sold out of trust? Is that  
23 what you're asking?

24 Q: Yes.

25 A: When a vehicle is sold -- when a vehicle is



1 sold out of trust, a lot of the independent  
2 dealers have floor plan companies and when the  
3 dealer sells the vehicle to a customer, instead  
4 of using that money that the customer paid for  
5 the vehicle, the dealer does not pay its floor  
6 plan company back and instead uses that money  
7 for something else and the floor plan company  
8 holds the title and then the customer not  
9 knowing what goes on behind the scenes buys  
10 that car in good faith and then doesn't get the  
11 title because the floor plan company won't  
12 release the title until the dealer pays for  
13 that car.

14 **MR. MARTIN:** I would ask to strike all that. We're  
15 not here on a breach of trust. We were not put  
16 on notice of any kind of breach of trust, not  
17 relevant to this particular matter.

18 **MR. PORTER:** The illustration is whether or not  
19 there can be a violation that's more than one  
20 violation under the (inaudible).

21 **MR. MARTIN:** And how that's relevant to our case, I  
22 don't know. My only -- my only re-direct --  
23 re-cross had to do with whether the willful was  
24 required for the charge of 45 days or four  
25 points, she said yes.



- 1 MR. PORTER: Counsel is insisting that the only  
2 thing it can be is willful, okay, and I'm  
3 saying that he even -- someone highlighted ---  
4 Q: What is the top highlight there?  
5 A: Engaging in any action which causes damage to  
6 any party or to the public.  
7 Q: Is that language you put in your notice?  
8 A: That's the language that's put in the notice.  
9 Q: Okay. How many points does that allow?  
10 A: Six points to revocation.  
11 MR. MARTIN: Again, totally irrelevant, not charged,  
12 not in the document. If you look at June --  
13 all right, let's just do it. Your June 27,  
14 2017, you did not at one time ever charge  
15 Toyota of Greer for a six point violation, did  
16 you?  
17 MS. LEAKS: No.  
18 MR. MARTIN: You charged them for a willful failure  
19 to deliver title to buyer or Department within  
20 45 days of sale or four points, did you not?  
21 MS. LEAKS: No, we charged them for engaging in any  
22 action which causes damage to any party or to  
23 the public, and then in parentheses we put  
24 failure to deliver within 45 days ---  
25 MR. MARTIN: Right.



1 MS. LEAKS: --- of the date of sale.

2 MR. MARTIN: And the part engaging in the action  
3 which causes damage to party or the public,  
4 that comes from the Dealer's Act, 56-15-30,  
5 right?

6 MS. LEAKS: I'm not sure which section ---

7 MR. MARTIN: That's exactly where it comes from ---

8 MS. LEAKS: Okay.

9 MR. MARTIN: --- in order to have a violation of the  
10 Dealer's Act, it has to be arbitrary,  
11 unconscionable, or in bad faith, correct?

12 MS. LEAKS: Correct.

13 MR. MARTIN: Okay. Then you charge under the  
14 regulations and that's where you picked up in  
15 the parentheses failure to deliver within 45  
16 days, correct?

17 MS. LEAKS: Correct.

18 MR. MARTIN: All right. Thank you. Just to be sure  
19 that this is an exhibit since you don't have a  
20 copy, I would proffer it now if it's not been  
21 admitted. I do have some -- they are  
22 regulations. They should have them and I don't  
23 have a copy for them.

24 THE COURT: At this point, I do not see where this  
25 has been entered in as an exhibit.



1 MR. PORTER: It was my intention to enter it, sir.

2 THE COURT: Any objection?

3 MR. MARTIN: No objections.

4 THE COURT: Then we will enter this in as  
5 Petitioner's Exhibit Number 5.

6 (Petitioner's Exhibit Number 5 was admitted into  
7 evidence.)

8 THE COURT: Anything further with the witness?

9 MR. PORTER: No, Your Honor.

10 THE COURT: Next witness, Mr. Porter?

11 MR. PORTER: I would like to -- to excuse Ms. Leaks  
12 with the possibility of recalling her later.

13 THE COURT: Okay. She's going to step outside, but  
14 she will come back in ---

15 MR. PORTER: Would this be a good time to take a  
16 short break for bathroom?

17 THE COURT: Any objections from ---

18 MR. MARTIN: Oh, no. Are you kidding, at my age.

19 THE COURT: We'll go off the record.

20 (Off the record.)

21 THE COURT: We're back on the record at this time,  
22 Mr. Porter, does the State have another witness  
23 at this time?

24 MR. PORTER: Yes, sir.

25 THE COURT: Okay.



1 MR. PORTER: We call Jason Benjamin.

2 THE COURT: Mr. Benjamin, you've already been sworn  
3 in.

4 MR. BENJAMIN: Yes, sir.

5 JASON BENJAMIN, being duly sworn, testifies as  
6 follows:

7 MR. BENJAMIN - DIRECT EXAMINATION BY MR. PORTER:

8 Q: All right. Mr. Benjamin, state your full name,  
9 please.

10 A: Jason Benjamin.

11 Q: Where do you work?

12 A: South Carolina Department of Motor Vehicles,  
13 dealer licensing unit.

14 Q: And what is your position?

15 A: I am a dealer agent.

16 Q: Describe your duties, please, sir.

17 A: They range from inspecting buildings for  
18 prospective dealerships to be sure they meet  
19 qualifications, assisting dealers with any  
20 problems that they have, as well as completing  
21 audits on dealers and working complaint cases  
22 that are submitted.

23 Q: How is it determined what jobs you work on?

24 A: They determine by county area. We're assigned  
25 a list of dealers that we -- that we handle.



1 Q: Okay. Did your territory include Greenville  
2 County?

3 A: The only part of Greenville County that I cover  
4 is Greer. The rest of mine all resides in  
5 Spartanburg County.

6 Q: And you said you deal with consumer complaints?

7 A: Yes, sir.

8 Q: Do you recall handling any complaints against  
9 Toyota of Greer?

10 A: All the ones that we're discussing today I did  
11 handle, yes, sir.

12 Q: I hand you a set of documents. Can you tell me  
13 what those are?

14 A: This looks to be Mr. Bocook's complaint and all  
15 the documents attached go along with that.

16 Q: Okay. When did the Department receive this  
17 complaint?

18 A: The date we received it is listed as July 14th,  
19 2016.

20 Q: What's the gist of the allegations?

21 A: Mr. Bocook stated that he purchased the vehicle  
22 from Toyota of Greer through America's Auto  
23 Auction on behalf of his dealership that he  
24 owns, Quality Auto, and the title was not  
25 delivered.



1 MR. MARTIN: Your Honor, I would object that this is  
2 a hearsay document. We've already had the live  
3 testimony of Mr. Bocook. We know what he said.  
4 We know what happened and that's the best  
5 evidence, so I would object to the hearsay.

6 THE COURT: Counsel?

7 MR. PORTER: Your Honor, I'm not admitting it for  
8 the truth of the matter asserted, I'm admitting  
9 it to show that we undertook an investigation  
10 and under the case of *State v. Brown*, 371 --  
11 excuse me, 317 S.C. 55, when that's the purpose  
12 of the admitted admission, it's not  
13 objectionable as hearsay, it's non-hearsay. I  
14 would also point out that our Administrative  
15 Law Court has ruled on this same issue, I  
16 believe it was before Your Honor, and I don't  
17 have a cite (inaudible) the matter went up to  
18 the Administrative Law Court of *South Carolina*  
19 *Department of Motor Vehicles v. Urban Auto*  
20 *Sales*.

21 THE COURT: Anything that is testified to without  
22 the hearsay, we won't accept, but I don't  
23 really know what he's gonna testify to at this  
24 point. But anything hearsay, we won't accept  
25 into our order and into the record at that



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time.

**MR. MARTIN:** I might just say that this exhibit that's stapled together but it's several documents. The first document is signed by Ms. Leaks and she's already testified. The second document is the vehicle history record that's already been objected to and you ruled upon. The third document is a letter from Monica Brown, not from Mr. Benjamin. The fourth document is a complaint letter cover sheet. And, again, that would be probably Ms. Leak's provision to put in the record. The fifth document is an investigation of complaint regarding dealer wholesaler, which is apparently something that the dealer comments that is Jason, so that's fine. That's something that Jason did, but that's the fifth document only. And then the sixth document is the complaint form that Mr. Bocook has already put in the record, and the second -- the seventh document is the -- the America's Auto Auction buy sheet that we've already put in the record. And then the eighth document looks like a letter from Toni Powell of Toyota of Greer dated July 25th, 2016, which we wouldn't



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1 have an objection to. So as far as all of  
2 these stapled together, the one that he has  
3 about the complaint for July 25, 2016, I think  
4 that's appropriate and the others are just  
5 repetitive or hearsay of someone else.

6 **THE COURT:** Okay. And we've noted for the record,  
7 any documents that are entered in, the only  
8 document that will be used within the final  
9 order will be what's before us here today.

10 **MR. MARTIN:** Thank you, Your Honor.

11 **Q:** So, Mr. Benjamin, did you investigate this  
12 complaint?

13 **A:** Yes, sir.

14 **Q:** And what did you determine?

15 **A:** I -- that a title was indeed delivered late,  
16 143 days after the date of purchase.

17 **Q:** Did you speak to anyone at the dealership?

18 **A:** Yes, I spoke with Ms. Powell, who is their  
19 wholesale title clerk. I've also spoke,  
20 although for some reason I didn't include his  
21 name here, Mr. Russell Antici, he's not  
22 present, but he is their corporate controller.  
23 He is generally, other than the title clerks,  
24 responsible for, you know, the dealership.  
25 He's generally the individual I speak with over



1           there.

2   **MR. PORTER:** I'd like to mark this and admit it as  
3           the next hearing exhibit.

4   **THE COURT:** Enter it in as Petitioner's Exhibit  
5           Number 6. Any objections other than the  
6           objection you had previous that we made a  
7           ruling on?

8   **MR. MARTIN:** Just the ones that were previously  
9           stated.

10 **THE COURT:** Okay. Those are noted for the record.  
11           Exhibit Number 6, are you gonna use the one you  
12           gave to ---

13 **MR. PORTER:** He might want to hold onto them until  
14           we finish with this one.

15 Q: I hand you another set of documents, can you  
16           tell me what those are?

17 **THE COURT:** Let me go ahead and mark that one as an  
18           exhibit ---

19 **MR. PORTER:** All right.

20 **THE COURT:** --- the Number 6 and that way I can ---  
21 (Petitioner's Exhibit Number 6 was admitted into  
22 evidence.)

23 **A:** This is the documentation that we would use or  
24           the office would use to title the vehicle.  
25           It's all ownership paperwork, application for



1 title, things like that.

2 Q: If you would, comb through it and to the bill  
3 of sale from Toyota of Greer to Quality Auto.

4 A: All right.

5 Q: About a third of the way down the page, there's  
6 a sentence that starts with "Any of the above,"  
7 would you read that?

8 MR. MARTIN: And I would object -- I would object,  
9 excuse me. This document is a document  
10 apparently between Scott Bocook and Toyota of  
11 Greer and it's on a form that's the Department  
12 of Motor Vehicles, but I don't see how this  
13 witness would be the one to authenticate this.  
14 I think this was what Mr. Bocook should have  
15 done since that's his signature and would  
16 object to it as not being able to be  
17 authenticated by this witness, being hearsay.

18 THE COURT: I'm gonna go ahead and let them go with  
19 it and I will look at it at the time we do the  
20 order or after we determine what the  
21 testimony's gonna be here as to my ruling.

22 MR. PORTER: And I would add also these are a part  
23 of the South Carolina Department of Motor  
24 Vehicles official records. It bears the stamp  
25 of an official record of the Department, which



1 has always traditionally been accepted by the  
2 OMVH and the Administrative Law Court.

3 **THE COURT:** We will look at it as to the relevancy  
4 of the case here.

5 **MR. PORTER:** Okay.

6 **Q:** Would you read that sentence?

7 **A:** I'm sorry, which sentence again?

8 **Q:** The sentence that starts with "And the."

9 **A:** And the above vehicle is free of all liens and  
10 encumbrances and the buyer's saying accept.

11 **Q:** And what sort of liens does it disclose?

12 **A:** At the time of sale from Toyota of Greer to  
13 Quality Auto it says there was no lien present.

14 **MR. PORTER:** I'd like to admit this as the next  
15 hearing exhibit.

16 **MR. MARTIN:** And my other objection is it totally  
17 contradicts the testimony of Mr. Bocook who  
18 admitted that he bought it on a blue light; he  
19 admitted that he bought it without a title,  
20 and, therefore, this is not the best evidence  
21 because we have his testimony and he knew he  
22 was buying this \$300 car without a title. This  
23 claims as if there is a title, so we know it's  
24 not accurate.

25 **THE COURT:** We'll go ahead and enter it as an



1 exhibit and, of course, the testimony will  
2 weigh against the exhibits and this will be  
3 Petitioner's Exhibit Number 7.

4 (Petitioner's Exhibit Number 7 was admitted into  
5 evidence.)

6 **THE COURT:** Does your witness need Petitioner's  
7 Exhibit 7 back or are you through?

8 **MR. PORTER:** No, maybe 6, though.

9 **THE COURT:** Okay. You still have the 6.

10 **A:** Yeah, I've got it. Yes, sir.

11 **Q:** Do you have 6?

12 **A:** Yes, sir.

13 **Q:** Let's look at the statement that was given to  
14 you by the title clerk. What's the first  
15 sentence?

16 **A:** The reason the car was late being titled was  
17 because there was a lien on the vehicle.

18 **Q:** Are you aware of any way the dealership can  
19 figure out whether there's a lien on a vehicle?

20 **A:** At -- in this case, since it is a trade, at the  
21 time of trade, when they accept the vehicle,  
22 they should know the vehicle's status as to  
23 whether it has a lien on it or not by being  
24 informed by the customer, you know, that way  
25 they're aware of the pay-off situation. They



1 can also conduct vehicle inquiries with us or  
2 through the (inaudible) as they've done.

3 Q: Do customers ever say things that are not  
4 accurate?

5 MR. MARTIN: Objection. What does that have to do  
6 with this case?

7 THE COURT: I'm gonna go ahead and allow the  
8 testimony.

9 A: Frequently.

10 Q: Thank you. All right. I think I'm through  
11 with 6. I hand you another set of documents.  
12 Can you tell me what those are?

13 A: This is a copy of the complaint and the report  
14 and attachments for Ms. Sheila Gilliam.

15 MR. MARTIN: Same objections, Your Honor.

16 THE COURT: And we've noted for the -- noted for the  
17 record.

18 Q: And what is the gist of the complaint?

19 A: Her complaint was that at the time of  
20 complaint, which she made the complaint June  
21 28, 2016, that she had not received the title  
22 from the dealership.

23 Q: Okay. And do you know how long it took her --  
24 well, let me ask you this, did you investigate  
25 this complaint?



1 A: Yes, sir, I did.

2 Q: And what did you conclude?

3 A: That the dealer delivered the title 99 days  
4 after the date of purchase.

5 Q: If you would, turn back and probably the last  
6 page. Read me the first sentence of that down  
7 to the description of the vehicle.

8 A: Down to the description?

9 Q: Uh-huh.

10 A: Personally appeared before me, MC Automotive,  
11 Inc. d/b/a Toyota of Greer, goes on to state  
12 their address, who being duly sworn, deposes  
13 and says on the 29th of March, 2016, they sold  
14 the vehicle, and then it goes on to give a  
15 description of the vehicle sold to Ms. Sheila  
16 Gilliam.

17 Q: All right. Read on down about a third of the  
18 way down. There's a sentence that begins with  
19 the word deponent.

20 A: Deponent further states that there are no liens  
21 or encumbrances on the said vehicle except as  
22 listed below and there is no liens listed  
23 below.

24 Q: All right. What did you find out when you  
25 (inaudible) the people with the dealership?



1 A: Well, when they took the car in trade from Ms.  
2 Gilliam, who was who they were dealing with  
3 because she was the purchaser of the vehicle  
4 from Toyota of Greer, the vehicle she traded in  
5 did not belong to her. And at the time of sale  
6 in essence the individual trading the vehicle  
7 in is purchasing -- you know, the dealer is  
8 purchasing the vehicle from that individual.  
9 At the time, they did not even know that that  
10 was not her car.

11 Q: All right. Some discussion there about Ford  
12 Motor Credit, right?

13 A: Yes.

14 Q: What do you know about Ford Motor Credit in  
15 this particular instance?

16 A: Just what I've heard today and what's written  
17 in the statement that they had to obtain a lien  
18 release from them in order to get a duplicate  
19 title.

20 MR. PORTER: I'd like to submit this as the next  
21 hearing exhibit.

22 THE COURT: Any objection?

23 MR. MARTIN: Same objection, Your Honor, to the  
24 previous ones.

25 THE COURT: To our ongoing objections?



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1 MR. MARTIN: Right.

2 THE COURT: Okay.

3 MR. PORTER: What number is that, Your Honor?

4 THE COURT: Number 8.

5 (Petitioner's Exhibit Number 8 was admitted into  
6 evidence.)

7 THE COURT: Are you through with the Exhibit Number  
8 8 with your witness or not?

9 MR. PORTER: Yes, sir.

10 Q: Can you tell me what those documents are?

11 A: It appears to be the paperwork where the  
12 vehicle was transferred to Ms. Gilliam, as well  
13 as the paperwork where it was transferred to  
14 the owner of the car prior to Ms. Gilliam -- or  
15 actually, the one prior was where the duplicate  
16 title was obtained. I apologize.

17 Q: And do you remember how many days it took for  
18 her to get her title?

19 A: That would be ~~99~~ yeah, without looking at that  
20 prior exhibit, I'm not sure I remember. I  
21 believe -- I believe it said 99, if I'm correct  
22 in remembering ---

23 Q: Thank you.

24 A: --- and remembering right.

25 MR. PORTER: I'd like that admitted as the next



1 hearing exhibit.

2 MR. MARTIN: Subject to the same ---

3 THE COURT: With the same objection, counsel? Okay.

4 Entered in as Petitioner's Exhibit Number 9.

5 (Petitioner's Exhibit Number 9 was admitted into  
6 evidence.)

7 Q: Tell me what that is.

8 A: Looks like a screen print of the program that  
9 we use at the DMV which provides information on  
10 the vehicle.

11 Q: Okay? Look at the second page, if you will.

12 MR. MARTIN: I would object to this as (a) he's not  
13 the person who does this document; (b) it's a  
14 computer print-out that he didn't even do; and  
15 (c) I don't have a chance to cross-examine the  
16 person whoever was filling in the information  
17 regarding this system.

18 MR. PORTER: If need be, we can call Ms. Leaks. I  
19 mean, she's the one that makes sure this  
20 information gets input.

21 THE COURT: These are documents that you use on a  
22 day-to-day basis, maybe not everyday, but  
23 during your investigations?

24 A: Yes, yes, research purposes mostly with this  
25 program.



1 **MR. PORTER:** And they are, of course, as I mentioned  
2 before, certified true copies of Department's  
3 records.

4 **THE COURT:** I'm gonna go ahead and accept the  
5 documentation, certified copy from the  
6 Department of Motor Vehicles. We do have the  
7 party here that could enter the testimony  
8 pertaining to that document based upon which  
9 type of testimony and evidence we determine  
10 from this witness here. You may continue.

11 **MR. PORTER:** Thank you, sir.

12 **Q:** What is the purchase date on the second page?

13 **A:** March 29th, 2016.

14 **Q:** What's the title print date?

15 **A:** July 7th, 2016.

16 **MR. PORTER:** I'd like that admitted as the next  
17 hearing exhibit, I think 10.

18 **THE COURT:** 10, yes, sir. Noted with the objection,  
19 we'll enter this in as Petitioner's Exhibit  
20 Number 10.

21 **(Petitioner's Exhibit Number 10 was admitted into**  
22 **evidence.)**

23 **Q:** I show you another set of documents. Can you  
24 tell me what those are?

25 **A:** The complaint made by Ms. Tonya McAlister to us



1 in reference to a vehicle she purchased from  
2 Toyota of Greer.

3 Q: Okay. Did you investigate that complaint?

4 A: Yes.

5 Q: What did you determine?

6 A: And I read the last one wrong, I was thinking  
7 it this was one, so I apologize about that.  
8 This was the one that when it was traded in by  
9 Ms. McAlister, who had purchased the vehicle,  
10 that it was not her vehicle that she traded in.  
11 Then it ended up -- once they found out, you  
12 know, they pulled the inquiry on the CVR  
13 system, found out it was a North Carolina, they  
14 went through the proper steps to get the  
15 duplicate and that it was titled 94 days after  
16 the date of sale.

17 Q: If you would, look at the next to last page.  
18 Does it have the same language that you read  
19 before?

20 A: It does.

21 Q: Okay. And so the deponent line, how does it  
22 go?

23 A: Deponent further states there are no liens or  
24 encumbrances on said vehicle except listed as  
25 below, and this shows that Ms. McAlister, when



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1 she purchased the vehicle obtained a lien  
2 through Wells Fargo.

3 Q: Any other mention?

4 A: No other mention of the lien other than the  
5 lien Wells Fargo had for Ms. McAlister's  
6 purchase.

7 Q: So once again, can you summarize the  
8 dealership's response?

9 A: The dealership's response to the complaint was  
10 that the vehicle was traded into the dealership  
11 on January 3rd and the previous owner had lost  
12 the title and stated they would get a  
13 duplicate. Once they pulled the inquiry, they  
14 realized that the individual who traded the  
15 vehicle in was not the owner. They made  
16 several attempts to contact the owner with no  
17 responses, finding out later it was a North  
18 Carolina -- a North Carolina title, with a lien  
19 listed on it, as well. Once they got the lien  
20 release and duplicate title, they walked it  
21 through and processed the title work.

22 MR. PORTER: I'd like this submitted as the next  
23 hearing exhibit, I believe 11.

24 MR. MARTIN: Subject to my same objection, Your  
25 Honor.



1 THE COURT: Noted for the record. We'll enter it in  
2 as State's Exhibit Number 11.

3 (Petitioner's Exhibit Number 11 was admitted into  
4 evidence.)

5 Q: Can you tell me what those documents are?

6 A: This is the documentation that was used to  
7 title the vehicle to Ms. McAlister after her  
8 purchase from Toyota of Greer.

9 MR. PORTER: I'd like to admit that as the next  
10 hearing exhibit, please, sir.

11 THE COURT: ~~With~~ the same ongoing objection?

12 MR. MARTIN: Yes, Your Honor.

13 THE COURT: Noted for the record. Petitioner's  
14 Exhibit Number 12.

15 (Petitioner's Exhibit Number 12 was admitted into  
16 evidence.)

17 Q: Mr. Benjamin, what are those documents?

18 A: This is a vehicle inquiry from our computer  
19 system. That gives us all the information for  
20 owner and the vehicle.

21 Q: Okay. If you would, look at the second page?

22 A: Yes, sir.

23 Q: What is the purchase date?

24 A: February 10th, 2017.

25 Q: And what is the title print date?



1 A: May 15th, 2017.

2 MR. PORTER: I'd like to admit that as the next  
3 hearing exhibit.

4 MR. MARTIN: Same objection, Your Honor.

5 THE COURT: Note the objection for the record.  
6 We'll enter it in as Petitioner's Exhibit  
7 Number 13.

8 (Petitioner's Exhibit Number 13 was admitted into  
9 evidence.)

10 MR. PORTER: No further questions for this witness.

11 THE COURT: Cross-examination?

12 MR. BENJAMIN - CROSS-EXAMINATION BY MR. MARTIN:

13 Q: Good morning, Mr. Benjamin.

14 A: Good morning.

15 Q: I believe that you are a rule keeper and you  
16 follow the rules, is that fair to say?

17 A: Partly.

18 Q: Partly.

19 A: As far as the keeper part, following, yes.

20 Q: Okay. So you're certainly familiar with the  
21 South Carolina Department of Motor Vehicles  
22 Procedure DE-001 with dealer sanctions, aren't  
23 you?

24 A: Yes.

25 Q: Okay. And would you agree with me that in



1 order to have a willful failure, that a failure  
2 to deliver a title violation is not considered  
3 willful if the dealer can provide a written  
4 statement, which is substantiated by a dealer  
5 licensing and audit unit agent identifying a  
6 prior seller or lien holder who has failed to  
7 deliver the title as required by law, would you  
8 agree that that's the rule?

9 A: That is what it says, yes.

10 Q: Okay. Do you follow what it says or do you get  
11 to make up what you want to do?

12 A: Willful is that objective -- subjective to me,  
13 so a car without a title, that's willful.

14 Q: Okay. So you don't follow your own rules, is  
15 that what your testimony is under oath?

16 A: No, I follow them.

17 Q: Okay.

18 A: I just have a different definition of willful.

19 Q: If it's -- if it says a failure to deliver  
20 title violation is not considered willful if  
21 the dealer can provide the fact that it was the  
22 previous owner that caused the problem or a  
23 previous lien holder caused the problem, that  
24 doesn't matter to you, does it? You still find  
25 that willful, is that --



- 1 A: Yes.
- 2 Q: --- your testimony?
- 3 A: Yeah, if you sell a car -- if I sell you a car  
4 and I don't have possession of the title ---
- 5 Q: So you're not ---
- 6 A: --- can't get it ---
- 7 Q: --- required to ---
- 8 A: --- I willfully sold that to you.
- 9 Q: You're not required to follow your own  
10 procedures, are you? You get to make the law  
11 yourself, is that fair to say?
- 12 A: No.
- 13 Q: That you're just ignoring this?
- 14 A: No, I say I have a different ---
- 15 Q: Aren't you bound by this ---
- 16 A: --- definition of willful.
- 17 Q: Aren't you bound by this?
- 18 A: Yes.
- 19 Q: Okay. Would you agree with me that it cannot  
20 be a willful failure if the problem lies with  
21 the previous owner who doesn't get the title,  
22 would you agree that this is what this says?
- 23 A: No.
- 24 Q: Let me read it one more time, maybe I -- maybe  
25 I confused you and I'm sorry. The failure to



1 deliver title violation is not considered  
2 willful if the dealer can provide a written  
3 statement which is substantiated by the dealer  
4 licensing and audit unit agent identifying a  
5 prior seller or lien holder who has failed to  
6 deliver the title as required by law.

7 A: Yes, that says ---

8 Q: Did I read that correctly?

9 A: Yes.

10 Q: Are you bound by that definition or not?

11 A: Yes.

12 Q: Okay. I'm glad we got that straightened out.  
13 So, with the first deal -- we know that the  
14 first deal had to do with -- was the deal with  
15 Sheila Gilliam, right?

16 A: Uh-huh.

17 Q: And we know that this is a car that was nine  
18 years old that she bought, right?

19 A: Uh-huh.

20 Q: And that the problem was that this nine year-  
21 old car had an old lien with Ford Motor Credit,  
22 isn't that right?

23 A: Yes.

24 Q: And Ford Motor Credit never sent it to the DMV  
25 to say this thing in 2012 was paid off, right?



1 A: It would be the prior owner's responsibility,  
2 but either way, we were not notified.

3 Q: So you were not notified, so when you pulled up  
4 your CVR, it showed a lien out there, didn't  
5 it?

6 A: Yeah. Well, yes.

7 Q: On your system?

8 A: As far as I have not seen that, but as far as  
9 the testimony today ---

10 Q: So ---

11 A: --- and our normal practices, that would be  
12 correct.

13 Q: So if there's an outstanding lien by Ford Motor  
14 Credit, you will not issue a duplicate title,  
15 will you?

16 A: Not until we've received notification that that  
17 lien's been satisfied.

18 Q: Okay. And that's a prior lien holder, is it  
19 not?

20 A: Yes, it is.

21 Q: So the problem in this deal was with the prior  
22 lien holder and it wasn't until they sent their  
23 letter to the DMV saying this has been paid  
24 off, that you then processed the title,  
25 correct?



1 A: If indeed, yes, if indeed it was paid off prior  
2 to being traded in, that is correct.

3 Q: So under this definition that you're required  
4 to apply, that could not be a willful failure,  
5 correct, on the part of the dealership?  
6 Correct?

7 A: According to that definition?

8 Q: Yes.

9 A: Yes.

10 Q: So if you had twelve points and you take off  
11 four, what do you get?

12 A: Eight.

13 Q: That's not a suspension of a one week is it?  
14 Not allowed, is it?

15 A: Not for eight points, it's not.

16 Q: No, sir. Same situation, wasn't it, on the one  
17 for Quality Auto and Mr. Bocook? In fact, you  
18 heard the testimony that when you buy from the  
19 auction and it's a blue light, the blue light  
20 tells Mr. Bocook, yo, there is no title with  
21 this car, right?

22 A: Yeah, it means the title is not present at  
23 auction. It does not mean ---

24 Q: That's right.

25 A: --- they will not get one.



1 Q: That's right. But and then you heard the  
2 testimony where he said I got 30 days to fuss  
3 and then 48 hours to put them on notice and I  
4 can turn the car back in and get my money back,  
5 right?

6 A: Yes.

7 Q: He didn't do that, did he?

8 A: No, he did not according to that.

9 Q: Instead, he sent you a complaint, right?

10 A: Yes.

11 Q: And we know that the problem lied with Carolina  
12 Title Company, right?

13 A: That they had a previous lien, yes.

14 Q: And it took them forever to finally say that  
15 lien was satisfied, right?

16 A: Could be, but how long did it take you to pay  
17 off it once it was traded in.

18 Q: They paid it off on March 8, was well within  
19 the 45 days, in fact ---

20 A: 45 days to deliver the title, not 45 days to  
21 pay off the lien ---

22 Q: Don't interrupt me, please, sir.

23 A: Okay.

24 Q: Okay. Let me ask a question and you can answer  
25 it.



1 A: Go for it.

2 Q: I won't interrupt you; you don't interrupt me.  
3 That lien was paid off on March 8 at Carolina  
4 Title ---.

5 A: Uh-huh.

6 Q: --- which was well within the 45 days of the  
7 sale, okay. Because the sale was on March  
8 29th. I'm sorry, March 8th. So, if the --- and  
9 then even though they got their money, they  
10 didn't bother to send the title. But the  
11 minute you got the lien release, rather, not  
12 the title, the lien release, they got their  
13 money on March 8, then it took them forever to  
14 actually send in the notification that the lien  
15 was satisfied.

16 A: Uh-huh.

17 Q: But once it was satisfied, you let that title  
18 go, right?

19 A: Yes.

20 Q: So once again, that was a problem with a  
21 previous lien holder, correct?

22 A: Yes.

23 Q: And under your own definition, under this  
24 definition that you don't like, but you gotta  
25 live under, that can't be a willful violation,



1 right?

2 A: Correct.

3 Q: So, if you're down to eight points minus four,  
4 what does that get you?

5 A: Four.

6 Q: Can you suspend for a week on four points?

7 A: No.

8 Q: Okay. Third vehicle, and you know where I'm  
9 going I'm afraid, don't you?

10 A: Defense pattern.

11 Q: Third deal was this situation where this  
12 gentleman just moved to South Carolina, had a  
13 South Carolina driver's license, bought the  
14 car, traded it in, said I'll get you the title.  
15 Remember?

16 A: Uh-huh.

17 Q: And he didn't, did he?

18 A: No.

19 Q: So we use your system and lo and behold one  
20 time in the past, someone else owned that car  
21 in South Carolina, so we thought what the heck,  
22 right?

23 A: Uh-huh. That's right.

24 Q: We finally got in touch with him and he said,  
25 no, no, no, I had it titled in North Carolina,



1 right?

2 A: Yes.

3 Q: And just because you got a South Carolina  
4 system, that doesn't pick up all the records  
5 from all these other states, does it?

6 A: Not in a hundred percent of the time, no.

7 Q: Right. And it certainly didn't here, did it?

8 A: Seems not.

9 Q: And the minute Toyota of Greer got in touch  
10 with this fellow who promised to get the title  
11 and he was the previous seller, right?

12 A: Yes.

13 Q: They did it lickety split and got it done,  
14 right?

15 A: Correct.

16 Q: So wouldn't you agree under your own definition  
17 that that was a previous seller problem, not a  
18 Toyota of Greer problem, and, therefore, it  
19 can't be willful as far as Toyota of Greer  
20 under this definition, right?

21 A: Under that definition, yes.

22 Q: So, we got four points minus four, what's that  
23 give us?

24 A: Zero.

25 Q: So we shouldn't be here today, should we?



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1 A: According to that, no.

2 MR. MARTIN: That's all I have. Thank you.

3 MR. BENJAMIN - RE-DIRECT EXAMINATION BY MR. PORTER:

4 MR. PORTER: May I have the procedure, please?

5 THE COURT: Do you know what exhibit that would be,  
6 Mr. Porter?

7 MR. PORTER: I do not. Probably about 8, 9.

8 THE COURT: Sanction report.

9 MR. PORTER: Yeah ---

10 THE COURT: Receipt, complaint. I'm not sure if  
11 that's a different exhibit.

12 Q: Read C2.

13 MR. MARTIN: What is he looking at? I'm sorry; I  
14 have no idea what he's ---

15 MR. PORTER: DE-002.

16 MR. MARTIN: That's exhibit?

17 MR. PORTER: Yeah, (inaudible).

18 MR. MARTIN: All right. Well, thank you for telling  
19 me.

20 A: C2?

21 Q: Please.

22 A: It says willful failure to deliver title  
23 complaints. Dealers are required to execute an  
24 assignment of title to the buyer and deliver  
25 the title to the buyer or the DMV within 45



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1 days of date of sale. The failure to deliver  
2 title violation is not considered willful if  
3 the dealer can provide a written statement,  
4 which is substantiated by a dealer licensing  
5 and audit unit agent.

6 Q: Stop. Did you substantiate or in any way pass  
7 muster on their excuse for not having the  
8 title?

9 A: I'm going to say once it's titled and we get  
10 their side of the story, we submit it as  
11 closed. As far as substantiating what's  
12 included in their statement, we usually accept  
13 it as fact because it's not really most of the  
14 time in their benefit to -- to, you know, lead  
15 us astray as far as what was going wrong with  
16 the title.

17 Q: Okay. Again, how much does DMV care about the  
18 rules of the auction?

19 A: Zero, not at all.

20 Q: What are you focusing on?

21 A: The dealer's responsibility to deliver the  
22 title within 45 days.

23 Q: Who, in this case, made the decision to sell a  
24 car out of inventory?

25 A: The dealer.



1 Q: Okay. Does it appear that the dealer had the  
2 title in hand when they sold it?

3 A: No, they did not.

4 Q: Okay. When did they find out?

5 A: After they accepted it on trade and already  
6 sold the vehicle.

7 MR. PORTER: No further questions.

8 MOTION FOR DIRECTED VERDICT:

9 MR. MARTIN: Your Honor, I would just like to make a  
10 motion for a directed verdict. We've had two  
11 Department of Motor Vehicles witnesses that  
12 have said that the willful failure cannot apply  
13 if the problem's with a lender or the previous  
14 seller. They have no case. We don't need to  
15 go any further. And I ask the Court to simply  
16 dismiss it at this time based on their own  
17 testimony.

18 THE COURT: We're going to go forward with it. I  
19 won't make a decision as of today. I'll go  
20 back and I'll do an order and have time to go  
21 through with everything.

22 MR. MARTIN: Just wanted to save some time.

23 THE COURT: I understand. Are you through with this  
24 witness at this time, Mr. Porter?

25 MR. PORTER: One other -- one other question, if I



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1           may.

2   **MR. MARTIN:** Your Honor, he is through. He -- he  
3           said no further questions and I simply made a  
4           directed verdict. It's inappropriate for him  
5           to get a second bite ---

6   **MR. PORTER:** It's within the discretion of the  
7           Hearing Officer and he just asked me if I had  
8           any further questions and I do

9   **THE COURT:** I'm gonna go ahead and ---

10   **MR. MARTIN:** All right.

11   **THE COURT:** --- whether we use it, whether it's part  
12           of the record, but as far as what we use in our  
13           order, I would afford it to you also.

14   **MR. MARTIN:** Thank you, Your Honor.

15   **THE COURT:** What are you looking for, Mr. Porter?

16   **MR. PORTER:** I'm looking for the initial notice.

17   **THE COURT:** The notice that was part of the record.

18   **MR. MARTIN:** What's this? A new exhibit?

19   **THE COURT:** No, that's the letter.

20   **MR. MARTIN:** You're gonna ask him about the letter?

21   **THE COURT:** That was the letter that was made part  
22           of the record. It was never ---

23   **MR. MARTIN:** Right, right.

24   **THE COURT:** --- entered in as an exhibit. It's just  
25           part of the record from the request.



1 MR. BENJAMIN - RE-DIRECT EXAMINATION BY MR. PORTER:

2 Q: What does that letter do?

3 A: It notifies the dealer of any -- any points  
4 that they have on their record or violations.

5 Q: Do you see anything in there that talks about  
6 willful failure to deliver?

7 A: I do not.

8 MR. PORTER: That's all.

9 MR. MARTIN: No questions.

10 THE COURT: Are you through with the witness at this  
11 time, Mr. Porter?

12 MR. PORTER: Yes.

13 THE COURT: Does State have another witness that  
14 they are gonna call at this time?

15 MR. PORTER: Lisa Byrd.

16 THE COURT: May I ask this question, will it be  
17 along the same line as what we have already  
18 covered pertaining to the issues that are  
19 before us here today? Is there any new  
20 testimony or evidence that she can enter in  
21 different than what we have already heard?

22 MR. PORTER: No, this is more background of her  
23 experience as an agent and a team lead.

24 THE COURT: How would that enter in as far as with  
25 additional testimony or evidence that would



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1 help us on the issues that are before us today?

2 MR. PORTER: I want to ask her about what she  
3 understands to be the standard in the industry.

4 THE COURT: Okay. As long as we limit it because  
5 we're beginning to run out of time using the  
6 facilities here that's been afforded to us by  
7 the City of Greer.

8 MR. PORTER: I wasn't aware of that; I'm sorry.  
9 What is our limitation, Your Honor?

10 THE COURT: They've got court coming in shortly from  
11 what -- the judge already came in one time, so.

12 MR. PORTER: This won't take five minutes.

13 THE COURT: Okay. As long as we don't get back into  
14 what we've already covered, I think we've got  
15 two that's pretty well covered. I'm not trying  
16 to take anything away from the State's exhibit,  
17 but I think with what we're here for that we  
18 have determined the letter of notice of  
19 suspension is what we're here for, I think the  
20 other two have covered -- the second one  
21 covered pretty much what the first one did. I  
22 just don't want to cover the same information  
23 over a third time and use our time up that we  
24 need maybe somewhere else along the line.

25 MR. PORTER: All right.



1 THE COURT: And, of course, you've already been  
2 sworn in.

3 LISA BYRD, being duly sworn, testifies as follows:

4 MS. BYRD - DIRECT EXAMINATION BY MR. PORTER:

5 Q: Ms. Byrd, state your full name, please.

6 A: Lisa Byrd.

7 Q: And what is your position?

8 A: Team lead for the upstate, the dealer licensing  
9 audit unit.

10 Q: How long have you been in that position?

11 A: Over 15 years.

12 Q: Okay. What is the expectation in the industry  
13 when someone sells a car?

14 A: That the title will be delivered within 45 days  
15 to the customer purchasing the vehicle.

16 Q: All right. I would assume that often -- well,  
17 do dealers take the subject liens that have a  
18 trade-in lien, do they take ---

19 A: Dealers take vehicles in on trade that have an  
20 outstanding lien.

21 Q: But in those cases, what do they do?

22 A: They factor that into the pricing of the  
23 vehicle on the trade-in and then they make --  
24 they speak with the person trading the vehicle,  
25 make sure that they own the vehicle, and then



1 pay off the trade. Put it on the lot and sell  
2 it.

3 MR. MARTIN: She's a DMV employee, Your Honor, and  
4 she's talking about what dealers do. She's  
5 never worked for a dealership. I'm not sure  
6 how she can testify as to what all these  
7 dealerships are doing. You know, they've got

8  
9 MR. PORTER: She probably has about as good  
10 information of what dealerships are doing as  
11 anybody in the State.

12 MR. MARTIN: I mean, she -- she is a DMV employee.  
13 She's not running car dealers.

14 THE COURT: Well, I think she deals with the dealers  
15 within her job that gives her a certain amount  
16 of information that she deals with with the  
17 dealers on a day-to-day basis, so I will allow  
18 it.

19 MR. MARTIN: Okay.

20 Q: What about when a dealer doesn't know whether  
21 they have a title in hand or can get the title?

22 A: If they -- if the title -- if the vehicle's put  
23 in on trade and they don't have the title at  
24 the time, they should attempt to get the title  
25 before it's sold.



1 Q: Okay.

2 A: And we suggest, when we open all dealers up,  
3 that they hold the vehicle until they get the  
4 title and can verify the information and the  
5 title matches the vehicle that they have on  
6 their inventory or on their lot for sale before  
7 they move it out to a customer.

8 Q: If a dealership is not certain whether it can  
9 get the title, does it know whether it might be  
10 salvage or some other brand?

11 A: No, that's one of the reasons why we ask to  
12 wait to get the title before they represent it  
13 to a customer, is so they know what they have.

14 Q: I'm sorry.

15 A: Pardon.

16 Q: Does the Department have any means of  
17 assistance for dealerships that may be having  
18 problems in this area?

19 A: Yes, any time a dealer has a problem, they are  
20 encouraged to reach out to their auditing agent  
21 or to the supervisor or management of dealer  
22 license and we'll help them as much as we can.

23 Q: And you heard Ms. Leaks' testimony concerning  
24 the meeting with Toyota of Greer?

25 A: I did. I attended the meeting.



1 Q: Was her statement true and correct?

2 MR. MARTIN: Objection, Your Honor. He's pitting  
3 one witness against the others. He can't do  
4 that.

5 THE COURT: And I think we've already got the  
6 testimony. If you have additional questions  
7 that would pertain to the matter that you have  
8 asked the question on, but I think we've  
9 already had Ms. Leaks' testimony pertaining to  
10 what issues we're here for.

11 MR. PORTER: I don't (inaudible) but that's fine.  
12 No further questions.

13 THE COURT: Cross-exam?

14 MR. MARTIN: No questions, Your Honor.

15 THE COURT: Is there anything further out of any of  
16 your witnesses that are -- they're welcome to  
17 stay. I don't know whether you are ready to  
18 excuse them at this point to go back to work or  
19 whatever other obligations that they have at  
20 this time.

21 MR. PORTER: I think we're all in the same car  
22 except for Mr. Benjamin, and so we've got a  
23 (inaudible)

24 THE COURT: I just wanted to (inaudible) at that  
25 point if you needed to release any of your



1 witnesses.

2 MR. PORTER: Thank you, Your Honor.

3 THE COURT: And, of course, they're free to stay in  
4 here if you want. At this time, do you have a  
5 witness that you'd like to ---

6 MR. MARTIN: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. TEER: Your Honor, I'd like to call Toni Powell,  
9 please.

10 THE COURT: Okay. And, Ms. Powell, you've already  
11 been sworn in.

12 MS. POWELL: Yes, sir.

13 TONI POWELL, being duly sworn, testifies as follows:

14 MS. POWELL - DIRECT EXAMINATION BY MS. TEER:

15 Q: Ms. Powell, can you please state your name for  
16 the record?

17 A: Toni Powell.

18 Q: And can you tell us what your job position is?

19 A: I'm the wholesale dealer trade clerk.

20 Q: What do you do in that job? What's your role?

21 A: When a car has been traded in, I pay off the  
22 car. I also do pay-offs. I track down titles.  
23 Whenever a car has been wholesaled at the  
24 auction, I'm responsible for getting the title  
25 to the auction and I communicate with the



1 auction. And then I handle dealer trades.

2 Q: I'm gonna hand you a document and I'm gonna ask  
3 you, Toni, if you recognize this document.

4 A: Yes, it's the purchase order and agreement with  
5 the customer.

6 Q: Okay. Will you look about halfway down the  
7 page in the box on the left-hand side under  
8 where it says used car trade-in and/or other  
9 credits?

10 A: Uh-huh.

11 Q: Can you tell me does it indicate under there  
12 whether there is any sort of lien on that  
13 trade-in vehicle?

14 A: There was no lien at all on this vehicle.  
15 There is a area for it, but there's not one on  
16 this car.

17 Q: Okay.

18 MS. TEER: And I'd like to have this marked as the  
19 next Respondent's exhibit. And then I'm gonna  
20 move that it go into evidence, Your Honor. And  
21 I think are we on Number 3 for us?

22 THE COURT: Be Number 3.

23 MS. TEER: Yes.

24 THE COURT: Any objections, Mr. Porter, to the  
25 document being entered in as ---



1 MR. PORTER: No, sir.

2 THE COURT: Enter in as Respondent's Exhibit Number  
3 3.

4 MS. TEER: And I'd like for you to mark that one.

5 THE COURT: Thank you.

6 MS. TEER: It continues.

7 (Respondent's Exhibit Number 3 was admitted into  
8 evidence.)

9 Q: All right. Toni, I'm gonna ask you if you will  
10 take a look at this next document and can you  
11 identify for me what that document is?

12 A: This is the (inaudible) inquiry that we run  
13 when cars do not have loans on them or if we  
14 come across a problem getting a title, we run  
15 this to check status of the title and the  
16 status of the liens.

17 Q: Okay.

18 MS. TEER: I'm gonna ask to have this admitted as  
19 Respondent's Exhibit Number 4.

20 THE COURT: Any objections to the exhibit, counsel?

21 MR. PORTER: No, sir.

22 THE COURT: We'll enter in as Respondent's Number 4.  
23 (Respondent's Exhibit Number 4 was admitted into  
24 evidence.)

25 Q: Toni, can you look at this document, does it



1 tell you what date you checked -- that you ran  
2 the inquiry?

3 A: Yes.

4 Q: Okay. And what date does it have on there?

5 A: February 4th, 2016.

6 Q: Okay. And if you'll look back at the last  
7 remark, what was the sale date of that vehicle?

8 A: 1/25/2016.

9 Q: Okay. So is it fair to say that within just a  
10 few days of getting that vehicle in trade, you  
11 ran the inquiry?

12 A: Uh-huh.

13 Q: And if you'll just give a verbal yes or no  
14 response ---

15 A: Yes.

16 Q: --- just so they --- thank you. And what did  
17 you find at the time that you ran this inquiry?

18 A: That there was a Ford Motor Credit company lien  
19 that was established in 2007 still listed on  
20 the vehicle.

21 Q: Okay. So at that point, when you discovered  
22 from the CVR report, and what does CVR report,  
23 what is that?

24 A: It's the system through the DMV that we go in  
25 to check all the records on the vehicle as far



1 as the title (inaudible).

2 Q: Okay. So what did you do next when you found  
3 this report that showed that Ford Motor Credit  
4 had a lien on it?

5 A: Contacted Ford Motor Credit.

6 Q: Okay. And when you went to contact Ford Motor  
7 Credit, what did you learn at that time?

8 A: That the lien was no longer active. It had  
9 been paid off for four years and once a lien  
10 has been paid off, it's no longer in their main  
11 database. They have to contact a research  
12 department in order to get me the lien release.

13 Q: Okay. And was it your understanding that Ford  
14 Motor Credit was going to take those steps and  
15 provide you with the lien release?

16 A: Yes, ma'am.

17 Q: Okay. I hand you this document and ask you to  
18 take a look at it. Can you identify for me  
19 what that document is?

20 A: This is my lien release that I got on June 28th  
21 to -- that would allow me to get the duplicate  
22 title on this vehicle.

23 Q: Okay.

24 MS. TEER: Your Honor, I'm gonna ask to have that  
25 admitted as Respondent's Exhibit 6 -- no, 5.



1 THE COURT: Exhibit Number 4.

2 (Respondent's Exhibit Number 4 was admitted into  
3 evidence.)

4 MS. TEER: If you can give that back to see if she's  
5 done.

6 THE COURT: Okay. Are you through with it?

7 MS. TEER: Yes, I'm through with that one. And  
8 she's got 3 here, as well.

9 THE COURT: You have already given me a copy of 3.

10 MS. TEER: Okay.

11 THE COURT: I'm gonna let you have that back. And 4  
12 and 5 I've got.

13 MS. TEER: And I'm moving now to have Number 5  
14 admitted.

15 THE COURT: And Number 5 will be the letter from  
16 Ford Motor?

17 MS. TEER: Yes, sir.

18 THE COURT: Okay. Any objection to Exhibit Number  
19 5, the letter from Ford?

20 MR. PORTER: It's already in the record, Your Honor.

21 THE COURT: Okay.

22 (Respondent's Exhibit Number 5 was admitted into  
23 evidence.)

24 Q: Toni, tell me what is your practice and  
25 procedure for when you have a file that comes



1 to your desk and it has an outstanding item on  
2 it, what do you do? What's your policy?

3 A: I have specific areas at my desk that I keep --  
4 if it's showing that there's still a lien on it  
5 but there's not -- it's already been paid off,  
6 it just hasn't been released in the DMV  
7 section, I do call every two to three days, at  
8 least three times a week, to check the status  
9 of these. If it has a pay-off on it and I've  
10 already -- my procedure is once the deal has  
11 been funded, that day I cut the pay-off check.  
12 I overnight the pay-off check to the lien  
13 holder within 48 hours. Primary lenders is  
14 usually not a big problem getting the titles  
15 back on time. Secondary lenders, title loan  
16 companies, some of these places they will hold  
17 the title for 21 days before they even release  
18 it to us.

19 Q: Now, with this first deal that we're looking  
20 at, the one where you were contacting Ford  
21 Motor Credit

22 A: Uh-huh.

23 Q: --- did you make follow-up calls to Ford Motor  
24 Credit?

25 A: Yes, I did.



1 Q: Okay. And when you would make your follow-up  
2 calls, what information did they provide you?

3 A: That it needed to be switched over to a  
4 supervisor, a supervisor needed to handle it  
5 because the lien was so old, or I would get  
6 told that I would need to be transferred to the  
7 research department or I was even told numerous  
8 times that the research department was handling  
9 it, and that as soon as they had it, they would  
10 send me the lien. At that point, I asked that  
11 as soon as they were able to release the lien  
12 that they fax me a copy of the lien (release  
13 that they were gonna mail also.

14 Q: Now, what did you do when you received the --  
15 finally received the copy of the lien relief  
16 letter?

17 A: We walked it through the DMV to have a  
18 duplicate title granted on it and at that  
19 time, Michelle submitted it for the tag and  
20 title work to be done for Ms. Gilliam.

21 Q: I'm gonna hand you this and ask you to take a  
22 look at those. Can you identify for me what  
23 this document is?

24 A: This is a form 400 which we use to send to the  
25 DMV to get the duplicate title.



1 Q: Okay. And can you ---

2 MS. TEER: Your Honor, I would like to have this  
3 document which consists of two pages marked as  
4 Respondent's Exhibit Number 6.

5 THE COURT: Any objection?

6 MR. PORTER: No, sir. I believe it's already in the  
7 record also.

8 Q: Can you look on the second page of this  
9 document and tell me does it indicate what date  
10 that this one was completed?

11 A: Yes, ma'am, June 30th, 2016. Two days after  
12 the lien release.

13 Q: Okay. And is the letter that you received from  
14 Ford Motor Credit, is it dated?

15 A: Yes.

16 Q: And what date does it have on it?

17 A: June the 28th, 2016.

18 Q: So it's fair to say that you took action to  
19 have this title processed with the DMV as soon  
20 as you received the lien release?

21 A: Yes, ma'am.

22 MS. TEER: I'm gonna let you mark this one as  
23 Exhibit Number 6.

24 THE COURT: That's marked as Exhibit Number 6 for  
25 the Respondent.



1 (Respondent's Exhibit Number 6 was admitted into  
2 evidence.)

3 Q: Toni, I am going to ask you some questions now  
4 about another transaction that we're here about  
5 today. Can you tell me what this document is?

6 A: This is the pay-off verification authorization  
7 form that the sales person gets at the time of  
8 the sale.

9 Q: Okay. And does this document come back to your  
10 desk as part of your job with the processing of  
11 this title?

12 A: Yes, ma'am. Once the original deal has been  
13 processed, we do a trade jacket and if there is  
14 a pay-off on the trade, this will go into it  
15 and as soon as it shows up as the original deal  
16 being funded on my schedules, I then call to  
17 get a ten-day pay-off.

18 THE COURT: Okay. Your Honor, I'd like to have this  
19 admitted as Respondent's Exhibit Number 7.

20 THE COURT: Any objections, Mr. Porter?

21 MR. PORTER: No objections.

22 THE COURT: Okay. Enter it in as Petitioner's --  
23 Respondent's Number 7 Exhibit.

24 (Respondent's Exhibit Number 7 was admitted into  
25 evidence.)



1 Q: Toni, on this document, I think you said that  
2 the salesperson takes down information. Is  
3 there anything on this document that reflects  
4 your handwriting or that you would have been  
5 involved with?

6 A: The amount at the bottom that -- and where it  
7 says 335.

8 Q: Okay. And how does it come about that you  
9 would put that sort of information on this  
10 form?

11 A: The sales people take down the pay-off  
12 information at the time of the sale. That  
13 obviously is not gonna -- if there is any  
14 financing on the new vehicle, that pay-off will  
15 not be any good because it does take time to  
16 get the deal funded. Once the new deal has  
17 been funded, I then call and get a new ten-day  
18 pay-off which will allow for any fees or  
19 anything that has occurred in the meantime to  
20 be taken care of.

21 Q: Okay. And when you are -- in regards to this  
22 deal, when you went to get your ten-day pay-off

23

24 A: Uh-huh.

25 Q: -- who did you contact to do that?



1 A: I attempted to call the Carolina Title Loans on  
2 Magnolia Street in Spartanburg because,  
3 obviously, that's what's on the form. I was  
4 told that they did not hold the lien and they  
5 did not hold the title; I needed to call the  
6 originating branch. They informed me it was  
7 the Greer branch.

8 Q: Okay. And what did you do at that time?

9 A: Googled and got the phone number. Called, got  
10 the ten-day pay-off. I believe it's the 818 --  
11 848 number that's on there. I called, got a  
12 ten-day pay off. The -- this particular deal  
13 funded on the 25th. I cut the check on the  
14 25th. And then I sent it out within 48 hours.  
15 This check cleared our account on March 8th and  
16 the day after I paid it off was the day it was  
17 wholesaled.

18 Q: I hand you a document and ask you if -- if you  
19 can identify that document for me.

20 A: This is the check that I cut to pay Carolina  
21 Title Loans off.

22 Q: Okay. And is there a -- is that check dated?

23 A: It is.

24 Q: And what date does it have on it?

25 A: February 25th, 2016.



1 Q: Okay. And is -- is it fair to say that this  
2 copy is a copy you get back after the check has  
3 been deposited?

4 A: They go to my office manager.

5 Q: Okay. Are you familiar with the information  
6 that shows up under the check?

7 A: Yes.

8 Q: Okay. And what does that information look  
9 like?

10 A: This is the date that it was sent to our bank,  
11 and that it cleared our bank so that's -- these  
12 are the dates that it was endorsed.

13 Q: Okay. And would you have been made aware that  
14 the check had cleared?

15 A: No.

16 Q: Okay. Now, after you called the Greer branch  
17 and got the pay-off and cut the check, what  
18 happened next?

19 A: It was wholesaled the day after I cut the  
20 check, so it went to a different desk. The  
21 young lady that was handling them at the time  
22 left approximately two to three weeks after  
23 this wholesale had taken place. At that time,  
24 it came back to my desk. There were still no  
25 red flags because it was a title loan company.



1 They hold titles 21 days sometimes before we  
2 get anything back. So about a week or so after  
3 it came back to my desk, it was like okay, it's  
4 I was in contact with Suzanne and Candace in  
5 America's Auto Auction and so it kind of threw  
6 up a red flag at that point and we started  
7 calling looking for the title.

8 Q: Okay. And what happened when you started  
9 calling to look for the title?

10 A: I continued to call the 848 number that I had  
11 and it would lead to a automated voice mail  
12 that was telling me the voice mail box was  
13 full.

14 Q: And is that something that you sometimes  
15 experience when you go to call somebody, a  
16 lender, to get information?

17 A: Uh-huh. Especially small lenders like that.  
18 It's not uncommon to not be able to get someone  
19 on the phone immediately.

20 Q: And so what do you do when that happens?

21 A: I continue to call and in this case, it was  
22 getting older and older. Our manager got  
23 involved. He found out, you know, call the  
24 Spartanburg one. At that time, we found out  
25 the Greer branch had went out of business.



1 That's why I wasn't getting any response from  
2 them.

3 Q: Even though you were able to leave a message or  
4 you were getting a voice mail?

5 A: I was still getting the voice mail box. The  
6 full voice mail box.

7 Q: So what did you do at that time?

8 A: I was told to contact the manager at the  
9 Spartanburg branch, I believe her name was  
10 Mary. Whenever I called, Mary was on vacation  
11 and was told I needed to wait a week for her to  
12 get back. Within -- I waited that week and  
13 within two days of contact with Mary, I had my  
14 lien release.

15 Q: And what did you do once you received the lien  
16 release?

17 A: We immediately applied for a duplicate title.

18 Q: Toni, are you able to apply for a duplicate  
19 title without the lien release?

20 A: Not if there's still lien being shown through  
21 the CVR system.

22 Q: So it's your understanding that as long as it's  
23 on the CVR system, you have to have the lien  
24 release?

25 A: Yes, ma'am.



1 Q: Toni, I want to show you what's been marked as  
2 the Petitioner's Exhibit Number 7, it's already  
3 been marked in this case, and I am looking on  
4 page seven, I believe it is, at what is titled  
5 a bill of sale. I want you to look, if you  
6 would, with me down in the lower right-hand  
7 corner of that document.

8 A: Uh-huh.

9 Q: And there is a name entered for the seller. I  
10 think it's listed above signature of sellers.

11 A: Okay.

12 Q: Are you familiar with anybody at the Toyota of  
13 Greer with that name?

14 A: No.

15 Q: Are you familiar with a form in that same  
16 format that would be issued from Toyota of  
17 Greer?

18 A: No.

19 Q: So if this form was completed, is it your  
20 understanding that it was completed by someone  
21 other than an employee of Toyota of Greer?

22 A: Yes, ma'am.

23 **THE COURT:** The customer purchase order agreement,  
24 we entered that in as an exhibit, would that be  
25 Number 7? I didn't get it when you gave it; I



1 just want to make sure that I'm on the right  
2 page.

3 MS. TEER: The purchase order that ---

4 THE COURT: You gave me two documents here.

5 MS. TEER: This one was one that had already been  
6 entered as Number 3 and if I handed you back  
7 her copy, then I apologize.

8 THE COURT: You did. We have a copy of that. Okay.  
9 So the document you gave me with the Toyota of  
10 Greer. (inaudible) marked out at the very top,  
11 this would be exhibit -- that you're wanting to  
12 enter in as Exhibit Number 7?

13 MS. TEER: Okay. Your Honor, that document was  
14 marked as Exhibit Number ---

15 THE COURT: You had entered one in, but I didn't get  
16 a copy of it at the time. This would be the  
17 copy of the check.

18 MS. TEER: All right. So we put the check in as one  
19 and we put -- I mean, not as number 1, but as  
20 an exhibit. And then this one's 3 and ---

21 MR. PORTER: I'm sorry, what are the numbers?

22 THE COURT: I'm looking at Number 7 as far as  
23 exhibit, if this is Exhibit Number 7. I don't  
24 have ---

25 MR. PORTER: Is the check a separate?



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1 MS. TEER: Yes, the check is separate.

2 THE COURT: Okay. So we have two documents here  
3 then

4 MS. TEER: Yes.

5 THE COURT: --- am I right?

6 MS. TEER: Yes, sir.

7 THE COURT: So we're gonna go with 7 and 8.

8 MS. TEER: 7 and 8, that's correct.

9 THE COURT: Okay.

10 MS. TEER: I'm gonna move to admit both 7 and 8 if I  
11 did not already.

12 THE COURT: Any objections to these documents going  
13 in as Exhibit Number 7 and Number 8?

14 MS. POWELL: No, sir.

15 (Respondent's Exhibit Numbers 7 and 8 were admitted  
16 into evidence.)

17 Q: Okay. Just to clarify, the document we were  
18 just looking at, the one where you said does  
19 not have an employee of Toyota of Greer's  
20 signature on it, does this indicate that this  
21 is for the vehicle that was sold to Quality  
22 Auto of Anderson?

23 A: That's the car that was sold at the auction,  
24 yes, ma'am.

25 Q: Those are all the --- Toni, of these two deals



1 that we've talked about you were involved with,  
2 did you at all times do everything in your  
3 power to follow the procedures to receive the  
4 lien satisfactions and the titles within the  
5 allotted period?

6 A: Yes, ma'am.

7 Q: Was there ever any time that you wilfully  
8 failed to perform those tasks to try to get the  
9 title in a timely manner?

10 A: No, ma'am.

11 Q: And in both of these circumstances that we're  
12 talking about, was the problem -- the hold-up  
13 caused by either a previous lender or some  
14 other outside person?

15 A: Yes, both of them were.

16 MS. TEER: I don't have any further questions at  
17 this time, Your Honor.

18 THE COURT: Cross-examination?

19 MS. POWELL - CROSS-EXAMINATION BY MR. PORTER:

20 Q: Good afternoon, Ms. Powell.

21 A: Good afternoon.

22 Q: I don't see a date on this, I believe it's  
23 Respondent's 7.

24 A: This would -- normally, it would be dated the  
25 day that the original deal was done. I don't



1 have the file right in front of me.

2 Q: So you don't know the date?

3 A: No, I don't know the exact date that we took  
4 the car in on trade from Ms. (inaudible).

5 Q: Okay. I believe Respondent's 8, you testified  
6 that you cut the check for Toyota of Greer on  
7 February 25th.

8 A: Yes, that's the date her new deal was funded.

9 Q: Okay. And would you accept subject to check  
10 that Mr. Eecook bought at auction that  
11 following day?

12 A: Yes, sir.

13 Q: February 26th?

14 A: Yes, sir.

15 Q: I believe you testified you had done everything  
16 in your power to keep from having any problems.

17 A: Yes, sir.

18 Q: But you didn't think of putting it on a back  
19 lot until something happened with the title,  
20 did you?

21 A: I don't sell the cars; I only handle them once  
22 they come upstairs after they've already been  
23 traded in.

24 Q: So that wasn't your decision?

25 A: It wasn't my decision. I'm an accounting



1 clerk.

2 Q: Okay. But at any rate, it didn't get put on  
3 the back lot until the title issue cleared up  
4 because it got sold at auction, correct?

5 A: Yes, sir, at that time we didn't have a problem  
6 with the title that we knew of. We didn't know  
7 the business was gonna be closing down.

8 Q: Well, you didn't have the title, did you?

9 A: No, sir, because we had to pay it off.

10 Q: This car to Ms. Gilliam, I think that was the  
11 complainant in the one that had originally been  
12 owned by customer Derrick, is that correct?

13 A: Yes, sir.

14 Q: Okay. And you -- does this mean that you  
15 purchased it on that date?

16 A: Yes, sir, this is the -- the -- January 25th,  
17 2016, is the sale date.

18 Q: And once again, the day that it actually -- the  
19 form 400 got submitted to the Department was  
20 when?

21 A: June 30th, two days after the lien release was  
22 issued.

23 Q: Okay. And once again, you didn't -- or it  
24 wasn't your decision, but you didn't decide --  
25 the company didn't decide to put it on the back



1 lot until the title issue got resolved, did it?  
2 A: I handle getting the titles and paying off the  
3 cars, not selling them.  
4 Q: Thank you.  
5 MR. MARTIN: Your Honor, what are our constraints on  
6 time? I'm not real clear on it.  
7 THE COURT: We've got probably in the neighborhood -  
8 - it's 12:20, at least 35 more minutes, maybe  
9 40. They said we have it until 1:00.  
10 MR. PORTER: You mean (inaudible).  
11 THE COURT: Re-direct?  
12 MS. TEER: I just want to make sure you were ---  
13 THE COURT: Anything further?  
14 MS. TEER: Yeah, I didn't want to jump in front,  
15 yeah.  
16 Q: So when the vehicle was sold to Ms. Gilliam,  
17 when it went beyond 45 days, she was not able  
18 to drive that vehicle legally, is that correct?  
19 A: Yes, sir.  
20 Q: Okay. So that's all right for her, it's not  
21 the dealership's fault ---  
22 A: No ---  
23 MS. TEER: Objection..  
24 A: --- not at all. It's ---  
25 THE COURT: Noted on the objection.



1 MR. PORTER: Was there a ground to that objection?

2 MS. TEER: He's asking her if it's okay for somebody  
3 else -- I mean, he's asking her to speculate  
4 about -- about whether she thinks it's okay for  
5 somebody to have their car more than 45 days.  
6 That's not -- that's just her personal opinion.  
7 That's not an appropriate question for her to  
8 answer as a title clerk.

9 THE COURT: Well, I think the title clerk would know  
10 as far as the 45 days is it pretty much  
11 mandated by ---

12 MS. TEER: Right, and she answered that.

13 THE COURT: --- by statute and I think that's what  
14 counsel was getting at as far as the 45 days,  
15 what a person would be able to do at that point  
16 is the way that I took the question. Am I  
17 correct on that, Mr. Porter?

18 MR. PORTER: Yes, sir.

19 THE COURT: Anything further?

20 MR. PORTER: Nothing further.

21 MS. POWELL - RE-DIRECT EXAMINATION BY MS. TEER:

22 Q: Toni, when you -- how long have you been in the  
23 job -- in the title clerk position?

24 A: I've been at this position approximately three  
25 years.



1 Q: And have you been involved in other aspects of  
2 the dealership before that?

3 A: Yes, ma'am. I've been there 14 years.

4 Q: 14 years, okay. And in your time in the 14  
5 years that you've been there and in your  
6 experience, when you got -- when you get a pay-  
7 off amount from a title loan company or a  
8 lender and you pay the check -- cut the check,  
9 is it your experience that you're gonna get  
10 your lien release and your title within the  
11 allotted time?

12 A: Depends on who the lien -- lender is. Not all  
13 the time.

14 Q: But you do expect when you cut the check and  
15 send it, that they're going to send you the  
16 lien release and you're going to be able to get  
17 your title work complete, is that correct?

18 A: Yes, ma'am, that's what I expect.

19 Q: And in the many, many deals you've handled,  
20 it's your experience that the title work gets  
21 completed in the manner that it should, is that  
22 correct?

23 A: Uh-huh. Yes, ma'am.

24 MS. TEER: I don't have anything further.

25 MS. POWELL - RE-CROSS-EXAMINATION BY MR. PORTER:



1 Q: Do your customers always tell you the truth?

2 A: For the most part, yes.

3 Q: But when they don't, and there ends up being a  
4 problem with the title, what happens if you  
5 sold it into the market?

6 A: The problems that we've had with the titles  
7 have not been the fact of the customer not  
8 telling the truth, it's the fact that the lien  
9 holder holding the title, the lien holder not  
10 doing their part, or the lien holder not  
11 releasing their liens.

12 Q: I'll grant you that. But then even obviously  
13 when it's the lien holders' fault supposedly,  
14 it's kind of unreliable, isn't it?

15 A: Yes, sir.

16 Q: And yet you sold this vehicle into the market?

17 A: That --

18 Q: Have you not?

19 A: 99 percent of the time we don't have this  
20 problem. We sell ours all the time ---

21 Q: Well, if you're Ms. Gilliam and you're in the  
22 one percent ---

23 MR. MARTIN: Please let her -- excuse me, Your  
24 Honor.

25 THE COURT: Were you through answering the question?



1 A: No, I was not.

2 THE COURT: I'm gonna allow her time to ~~---~~

3 MR. PORTER: All right.

4 THE COURT: --- finish the answer.

5 Q: My apologies.

6 A: We sell cars and we wholesale cars all the  
7 time. This -- these are rare occasions that we  
8 have problems. And almost every time it's from  
9 a secondary lender. But even so, it doesn't  
10 take as long as this has. This is the --  
11 probably the second or third -- as long as I've  
12 worked with accounting at this dealership, this  
13 is probably the second or third time I've had  
14 a lien holder go out of business and refuse to  
15 send me my title or a lien release after  
16 they've cashed my check.

17 Q: Well, once again, if you're Ms. Gilliam and  
18 you're in the one percent, you end up being in  
19 a car you can't drive legally, right?

20 A: Yes, sir.

21 Q: Which could have been avoided if you didn't  
22 sell it into the market, right?

23 MS. TEER: Objection, Your Honor.

24 THE COURT: On what grounds?

25 MS. TEER: He's asking her to speculate.



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1 MR. PORTER: It's pretty obvious you can't get a  
2 title ---

3 THE COURT: I don't think as far as the speculation  
4 from what she's answered she pretty much knows  
5 the 45 days is the cut-off date that once  
6 that's passed, that individual's not able to  
7 have it legally registered and titled.

8 MR. PORTER: I'm sorry; did she answer?

9 A: No, can you repeat the question, please?

10 Q: If you were Ms. Gilliam, and you're in the one  
11 percent, and you have a car you can't drive,  
12 right?

13 A: Yes, sir.

14 Q: And that could have been avoided had the  
15 dealership not sold the car into the market,  
16 right?

17 A: True.

18 Q: Thank you.

19 MR. PORTER: Nothing further.

20 MS. TEER: I don't have anything further for this  
21 witness, Your Honor.

22 THE COURT: Okay. On your witness, does she need to  
23 go back to work? It's entirely up to you  
24 whether she wants to stay or needs to go back  
25 to work.



1 MS. TEER: She rode with our other witness, so she's  
2 -- she's here for the current duration, Your  
3 Honor.

4 THE COURT: Okay.

5 MS. TEER: I'd like to call Michelle Taylor.

6 THE COURT: And Ms. Taylor, you've already been  
7 sworn in?

8 MS. TAYLOR: Yes, sir.

9 MICHELLE TAYLOR, being duly sworn, testified as  
10 follows:

11 MS. TAYLOR - DIRECT EXAMINATION BY MS. TEER:

12 Q: Can you state your name for the record?

13 A: Michelle Taylor.

14 Q: And what is your position?

15 A: I post the whole -- not the wholesale, I'm  
16 sorry. I post the retail deals and I do the  
17 tag work for the retail deals.

18 Q: One of the deals that we are here about today  
19 involves a trade-in by a Mr. Gorman. In your  
20 position in the title office, are you familiar  
21 with this particular deal that we've been  
22 talking about?

23 A: I am.

24 Q: Okay. Can you tell me what your involvement  
25 with that deal was? How did you become



1 involved?

2 A: I posted the deal and I turned in the trade  
3 paperwork to Toni.

4 Q: And you've become aware that there was an issue  
5 regarding this vehicle?

6 A: Yes, at the time Toni did not have access to  
7 the CVR system, so I was asked to -- she asked  
8 me to run an inquiry on it. We knew that we  
9 were going to be getting a title from the  
10 customer. The title -- the customer had lost  
11 the title, but he was going to apply for the  
12 duplicate for us.

13 Q: Okay. And what happened when you ran the CVR  
14 request?

15 A: Well, when we ran it, there was a South  
16 Carolina CVR inquiry that showed that vehicle,  
17 VIN number and everything. The only difference  
18 was it had a different customer's name on it,  
19 not Mr. Gorman's.

20 Q: Okay. And what did you do at that point when  
21 you ran that CVR request?

22 A: It does happen and where there's a different  
23 customer on there and it could be a relative,  
24 a friend, a neighbor that they purchased the  
25 vehicle with at one point, so we tried to



1 contact Mr. Gorman to find out if, in fact, he  
2 knew who this customer was and if they would be  
3 any help in getting the title.

4 Q: Okay. And what happened when you tried to  
5 contact Mr. Gorman?

6 A: I didn't get any response and I left several  
7 messages and didn't get any responses from him.

8 Q: Okay. And do you have a process in place for  
9 a file that has come to you that has a problem  
10 as far as following up and trying to be able to  
11 resolve those problems?

12 A: Yes, we try to contact customers, lien holders,  
13 anybody that we need to every two to three days  
14 because we know we are time sensitive.

15 Q: And at any point in time were you able to reach  
16 Mr. Gorman?

17 A: No, not until mid April when I reached out to  
18 the gentleman's salesperson.

19 Q: Okay. And what happened at that point?

20 A: The salesperson was able to get him on the  
21 phone and he brought -- actually kept him on  
22 the phone when he reached him, brought him up  
23 -- brought the phone upstairs to me and I spoke  
24 with Mr. Gorman myself.

25 Q: Okay. And what information did you learn as a



1 result of speaking with Mr. Gorman?

2 A: That even though he had everything that said  
3 South Carolina, it was in fact a North Carolina  
4 title, that he was, in fact, trying to get us  
5 a duplicate himself and found out that it was  
6 North Carolina and that there was a lien on it,  
7 but he was having problems with the lien holder  
8 and getting a lien release. But it was, in  
9 fact, paid off.

10 Q: So your understanding was that he had been  
11 unable to get his duplicate title because a  
12 lien was showing up on his ---

13 A: Yes, ma'am.

14 Q: --- records? What did you do as a result of  
15 learning that information from Mr. Gorman?

16 A: Well, we had a sister store that had previously  
17 worked with us pull a North Carolina inquiry  
18 and it did show that there was a lien on it  
19 from JP Morgan Chase Bank. I had been working  
20 with this bank on another favor that we were  
21 doing for them at the time and I called in a  
22 favor and asked the young lady that we were  
23 working with for a letter of lien release for  
24 this deal.

25 Q: I show you this document and ask you if you can



1 identify that for me?

2 **A:** This is an inquiry from the North Carolina --  
3 their CVR system, whatever kind of system that  
4 they use to pull.

5 **Q:** Okay. And is this the information that you  
6 were then provided ---

7 **A:** Yes.

8 **Q:** --- by the other store you had contacted?

9 **A:** Yes.

10 **MS. TEER:** Your Honor, I'd like to have this  
11 admitted as Exhibit 9.

12 **THE COURT:** Any objection?

13 **MR. PORTER:** No, sir.

14 **THE COURT:** We'll enter it in as Respondent's  
15 Exhibit Number 9.

16 **MS. TEER:** Thank you, Your Honor,

17 **(Respondent's Exhibit Number 9 was admitted into**  
18 **evidence.)**

19 **Q:** Now, Michelle, can you look at this document  
20 and tell me whether it indicates that Mr.  
21 Gorman was the owner of this vehicle?

22 **A:** It does at the very top.

23 **Q:** Okay. So is it fair to say that the other name  
24 came up because of the two different state  
25 systems?



1 A: Yes, it could have been exactly that.

2 Q: So you indicated that you reached out to the  
3 lender, who was still listed on the vehicle, is  
4 that correct?

5 A: Yes.

6 Q: I'm gonna show you two -- two documents and ask  
7 you if you can identify --

8 THE COURT: Before -- Exhibit Number 9, is that  
9 ~~will part of your questions or can we go --~~

10 MS. TEER: We can go ahead and give that to you.

11 THE COURT: Okay. Thank you.

12 Q: Can you tell me what these two documents are  
13 that I've just handed you?

14 A: The first is a letter to me showing that she  
15 was sending me the lien satisfied notice. The  
16 first one is just basically the cover letter  
17 saying that if we have any other issues to give  
18 her a call. And the second page is the actual  
19 letter of lien release showing that Chase Bank  
20 has no longer any interest in that vehicle.

21 MS. TEER: I'd like to have this admitted as Exhibit  
22 Number 10, Your Honor.

23 THE COURT: And this is two-page also?

24 MS. TEER: It is a two-page document, yes.

25 THE COURT: Any objections, Mr. Porter?



1 MR. PORTER: No, sir.

2 THE COURT: Okay. We'll enter it in as Respondent's  
3 Exhibit Number 10.

4 (Respondent's Exhibit Number 10 was admitted into  
5 evidence.)

6 Q: Just for reference and I'll let you look at  
7 what's been marked as 9 and 10.

8 A: Okay.

9 Q: Number 9, the vehicle inquiry, does it indicate  
10 on the page when that inquiry was sent to you?

11 A: It was sent to me on April 12th.

12 Q: Okay. And when were you able to then call in  
13 your favor with Chase Bank and get them to  
14 respond to you?

15 A: Basically the same day I called the lady that  
16 I had been working with on another deal.

17 Q: So is it fair to say that you immediately took  
18 the steps to get the lien release taken care of  
19 as soon as you were provided ---

20 A: Yes.

21 Q: --- the information? And then what happened  
22 after you received that lien release document?

23 A: Well, once we -- once I received the lien  
24 release letter, I filled out a duplicate title  
25 application for North Carolina, got a check cut



1 for it, and sent it overnight to our tag office  
2 in Gastonia that does all of our tag work for  
3 North Carolina.

4 Q: Michelle, would it have been possible to get  
5 the duplicate tag from the North Carolina  
6 Division of Motor Vehicles without having the  
7 lien release from Chase Bank?

8 A: No, we're not.

9 Q: Do customers sometimes say that they'll get  
10 their own duplicate title if they lost it or  
11 don't have it with them?

12 A: Yes, it's happened before.

13 Q: And does it typically take -- well, how long  
14 does it normally take for them to get that?

15 A: Well, if they have no problems with their -- if  
16 they have no outstanding liens or anything or  
17 everything's cut and dry, they can usually go  
18 in -- if it's South Carolina, they can go right  
19 in and do it same day. They fill out an  
20 application and they can get it same day.  
21 North Carolina it has to be -- they'd have to  
22 submit it to Raleigh and then we -- then we can  
23 have it. It usually takes about 20 to 30 days.

24 Q: So when a customer -- when you have a file on  
25 your desk and you know that the customer has



1 requested a duplicate title, would it be  
2 customary for it to be for a couple weeks to  
3 pass before it would be an indication that you  
4 weren't going to get all your paperwork back in  
5 a timely fashion?

6 A: No, we usually get everything within a timely  
7 fashion.

8 Q: Okay. So was it -- is it your expectation when  
9 a file comes in and a customer said I don't  
10 have a lien and I'm going to request a  
11 duplicate, has it been your experience that  
12 that paperwork can be completed within the  
13 required time frame?

14 A: Yes, ma'am.

15 Q: Okay. And how long have you been working in  
16 the title clerk office?

17 A: I've been up in the accounting office for about  
18 three and a half, four years. With the whole  
19 company, as a whole, for nine.

20 Q: And have you processed a number of deals during  
21 the time that you -- the nine years that you've  
22 been up there?

23 A: Yes.

24 Q: How many of these transactions do you have on  
25 an average, let's say month, come across your



1 desk?

2 A: 200 or 300 a month.

3 Q: Has it been your experience that you are able  
4 to get those processed within the allotted  
5 time?

6 A: Yes, ma'am.

7 Q: And when you have one that has a problem, is it  
8 your process to continue to follow-up on that  
9 until you are able to resolve that problem?

10 A: Yes, ma'am.

11 Q: In working with this particular deal that we're  
12 talking about, was there any time that you  
13 wilfully failed to follow your procedure or to  
14 follow-up on trying to get this title back in  
15 a timely fashion?

16 A: No, ma'am.

17 MS. TEER: I don't have any further questions at  
18 this time, Your Honor.

19 THE COURT: Cross-examination?

20 MS. TAYLOR - CROSS-EXAMINATION BY MR. PORTER:

21 Q: Ms. Taylor, let me give you what I believe is  
22 Respondent's Exhibit 9.

23 A: Yes.

24 Q: Is there a date on there other than the fax  
25 date?



1 A: There's the date where it was titled originally  
2 to Mr. Gorman. There is the date for the lien  
3 when it was first opened. And there's also the  
4 gentleman's expiration date on his plate from  
5 when (inaudible)

6 Q: As to when it was pulled?

7 A: No.

8 Q: All right.

9 MR. PORTER: Could I have Petitioner's 11? That's  
10 Respondent's, I think.

11 THE COURT: Number 11.

12 Q: Can you tell me what that is?

13 A: That's the letter that I wrote about what  
14 happened with this deal.

15 Q: Okay. All right. Tell me if I'm not quoting  
16 any of this correctly. Ms. Tonya McAlister  
17 purchased a used 2006 Mazda, we'll skip the  
18 VIN, on February 10, 2017. The vehicle was  
19 traded into our dealership on January 3rd,  
20 2017. The previous owner had lost the title  
21 and stated would get us a duplicate himself.  
22 We had pulled an inquiry through the CVR system  
23 and were told -- and were going to attempt to  
24 apply for duplicate ourselves. However, the  
25 customer listed was not the customer who had



1 traded in the vehicle.

2 A: Correct.

3 Q: Okay. So the customer that brought the car in  
4 was not Ashley Young.

5 A: From what that inquiry showed and it has  
6 happened before in the past where a family  
7 member, cousin, brother, mother, somebody was  
8 the previous owner of the vehicle.

9 Q: Okay. And you pulled this from the North  
10 Carolina version of CVR on the date of the fax,  
11 correct?

12 A: Yes, I called and requested it from a sister  
13 store.

14 Q: So, Ms. McAlister purchased it, you said, on  
15 February 10, 2017, and the inquiries that were  
16 made were made April 12th ---

17 A: Yes.

18 Q: --- more than two months after?

19 A: Yes, and that would be because we had been  
20 trying to get in touch with Mr. Gorman, the  
21 previous owner of this vehicle, and we didn't  
22 get in touch with him until around this date  
23 and that's why I, in turn, called our sister  
24 store and said, hey, can you please pull me an  
25 inquiry.



1 Q: Let me ask you this, is it the dealership's  
2 procedure to not ask for driver's licenses of  
3 folks that come in with trades?

4 A: We do ask for driver's licenses, yes.

5 Q: Do you know if you got a driver's license from  
6 the gentleman that brought in this vehicle?

7 A: All I do is post the deals and do the tag work,  
8 so I really don't know what they do downstairs  
9 in finance. If they don't get it, that's them.

10 Q: All right. That's all on that. And so you  
11 have CVR capabilities, is that with a vendor  
12 that's called CVR ---

13 A: CVR, yes.

14 Q: --- or is that just the name of the ---

15 A: It's the name of the program that we use and  
16 we're only allowed to -- allowed to have South  
17 Carolina. We don't have access to any other  
18 state.

19 Q: Okay. Does the dealership have a subscription  
20 to Experian, or R.L. Polk, or any of those  
21 companies that have title information?

22 A: We did have CarFax at one point. We now have  
23 a -- something called Auto Check. It does not  
24 allow us to know the last place that it was  
25 titled. We didn't have access to any of that.



1 Q: I'm sorry; it does not allow you to know the  
2 last place it was titled?

3 A: Yes, it doesn't show anything on those auto  
4 checks. And at the time of this deal, we  
5 didn't have access to anything that we could  
6 personally look.

7 Q: Was there anything preventing you from getting  
8 a subscription to Experian or R.L. Polk?

9 A: I'm not a manager, so I couldn't answer that;  
10 I'm sorry.

11 Q: You said you used to have CarFax, but you don't  
12 any more?

13 A: Yes.

14 Q: All right. Is there some way you can protect  
15 yourselves from getting branded titles, salvage  
16 titles, if you don't have anything like that?

17 A: That's up to managers yet again. I don't have  
18 any authority.

19 Q: And, once again, I have to ask Ms. Powell, I  
20 mean, this two months passed by before you got  
21 an indication from North Carolina about what  
22 was going on with the North Carolina title.

23 A: No, we didn't know that it was a North Carolina  
24 title until I was able to get with the customer  
25 to find out that it was a North Carolina title



1 and not a South Carolina title. Because, like  
2 I said, we've pulled inquiries before where  
3 it's been another family member whose name that  
4 the title was in and we wouldn't have known  
5 that had we not spoken with Mr. Gorman.

6 Q: But you knew you didn't have the title in hand?

7 A: Correct, because the customer stated that he  
8 was getting to do the (inaudible) and ---

9 Q: But you still --- I'm sorry.

10 MR. MARTIN: Please let her finish.

11 A: And we would have expected to have a title in  
12 hand as soon as he got it, usually within a  
13 couple of weeks, because that's how long it  
14 takes usually.

15 Q: But you still went -- sorry. But you still  
16 went ahead and sold the vehicle into the  
17 market, right?

18 A: I don't work in sales, so I can't -- I just  
19 work in accounting and that's not up to me.

20 Q: So you don't know when it was sold?

21 A: It was sold on the date that's on the letter.

22 Q: Okay. So it was sold even though there were  
23 title problems and when Ms. McAlister got it,  
24 when more than 45 days passed by, she couldn't  
25 drive legally, could she?



1 A: Correct.

2 Q: And that could have been prevented had you put  
3 it on the back lot and not sold it, correct?

4 A: Correct.

5 MR. PORTER: No further questions.

6 THE COURT: We're down to a little less than right  
7 around 15 minutes that we're gonna have to wrap  
8 it up or move out on the street.

9 MS. TEER: I just -- I just have a short follow-up.

10 MS. TAYLOR - RE-DIRECT EXAMINATION BY MS. TEER:

11 Q: Michelle, in the normal course of business in  
12 your processing of these many deals over the  
13 time you've been there, is it your experience  
14 that you're able to get a duplicate title for  
15 a customer within the 45 day period?

16 A: Absolutely, yes, ma'am.

17 MR. MARTIN: Your Honor, we call Mr. Bob Hogan.

18 THE COURT: You may step down.

19 MR. MARTIN: Real fast. Bob, you've got to run.

20 MR. PORTER: Run out there.

21 MR. MARTIN: Can we let these ladies go?

22 THE COURT: You sure can. Have no objection.  
23 Counsel, do you have anything further of their  
24 witnesses that you know of at this time?

25 MR. MARTIN: No, sir.



MR. HOGAN - DIRECT EXAMINATION BY MR. MARTIN:

- 1           Q: Please state your name for the record and what  
2           you do and why you're here.  
3  
4           A: Robert Hogan. I am the chief operating officer  
5           and partner of Toyota of Greer, and run some  
6           other car dealerships here in Greer.  
7           Q: And how many cars have you sold since you  
8           started coming to Greer in 15 years?  
9           A: Hundred -- see, you're gonna make me guess.  
10           125,000, roughly.  
11           Q: Okay. And in order to sell those cars, do they  
12           have titles?  
13           A: Yes, sir, they do.  
14           Q: And do they go to this same department we've  
15           been talking to these ladies?  
16           A: Yes, they do.  
17           Q: So about 125,000 cars have been sold in the  
18           three-year period that these ladies have to  
19           handle?  
20           A: In the three-year period, 25,182.  
21           Q: Okay. Can you identify this, please, sir?  
22           A: Okay. Yes, this is just a month by month sales  
23           report, new and used and that doesn't even  
24           account for the wholesale.  
25           Q: Okay.



- 1 A: Those are just -- this is the right report,  
2 yeah, that this is our CFO puts together for us  
3 and kind of keeps track of it, you know,  
4 (inaudible) reports and in-house. That does  
5 not include the wholesale vehicles.
- 6 Q: Okay. And do all the titles go to these  
7 ladies?
- 8 A: Yes, they do.
- 9 Q: And out of -- in the last three years, how many  
10 cars for title?
- 11 A: 25,182.
- 12 Q: 125,000?
- 13 A: No, for the last three years, 25,182.
- 14 Q: Okay.
- 15 A: Your previous question I thought was pertaining  
16 to the 15 ---
- 17 Q: Okay.
- 18 A: --- you know, 14 and a half years.
- 19 Q: And we're here on three problems, is that  
20 right?
- 21 A: Yes, sir.
- 22 Q: Okay. Now, what would happen if your  
23 dealership had to close for a week?
- 24 A: It would be -- well, there's several things  
25 that would



1 MR. MARTIN: Oh, did I move that for exhibit?

2 THE COURT: You did not, no, sir. Any objections to  
3 the chart, Mr. Porter?

4 MR. PORTER:

5 A: What did I do?

6 Q: I don't know. Let me see what you have. She's  
7 throwing me curve balls and I can only hit a  
8 fast ball.

9 MR. MARTIN: All right, so this is not the right  
10 one. What you handed me is not the correct.  
11 This is the correct one?

12 UNKNOWN FEMALE: Yes, that's correct.

13 MR. MARTIN: This is Toyota?

14 UNKNOWN FEMALE: Uh-huh.

15 A: Yes.

16 Q: Okay. This is the exhibit I want to introduce.  
17 Can you identify that, Bob?

18 A: Yes, that's the same report for Toyota of  
19 Greer.

20 MR. MARTIN: Do we have one for him?

21 UNKNOWN FEMALE: Yes, sir. (inaudible)

22 Q: So we have one for Toyota of Greer and one for  
23 the other dealership, right?

24 A: Yes, sir.

25 Q: So there are two, right, Bob?



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1 A: There may be multiple.  
2 UNKNOWN FEMALE: (Inaudible)  
3 MR. MARTIN: Yes, if they all go to the same title  
4 (inaudible).  
5 A: Should be four.  
6 O: Okay. One ---  
7 MR. PORTER: This is the same thing, looks like.  
8 MR. MARTIN: No, this is for Toyota of Greer,  
9 30,000; this is for the Nissan store. Ooh,  
10 you're right.  
11 A: There's four of them.  
12 MR. MARTIN: This is for the Nissan; this is for the  
13 Hyundai. Laura, you've got four of them.  
14 A: Yeah, there are. Four, go through them.  
15 MR. PORTER: Your Honor, their volume of sales is  
16 pretty irrelevant to begin with. Certainly  
17 volume of sales of some other dealership is not  
18 relevant to what we're talking about here  
19 today.  
20 THE COURT: And I think we've pretty much got that  
21 the volume of sales is pretty good.  
22 MR. MARTIN: Thank you, Your Honor.  
23 THE COURT: But the issues here are not with the  
24 volume of sales and we understand what you're  
25 getting at as far as out of this number of



1 sales, we only have this number.

2 **MR. MARTIN:** The issue is willfulness, Your Honor,  
3 and if we have 25,182 sales and you've got  
4 three problems in three years, that is evidence  
5 to show that there's not a willful violation on  
6 the part of these ladies who have ~~it~~ who run it  
7 for four dealerships, for Kia, for Toyota, for  
8 Hyundai, and for Nissan.

9 **THE COURT:** And I'll be glad to take the exhibits,  
10 if no objection, as far as ~~the~~

11 **MR. PORTER:** I -- I do object to any record from  
12 another dealership. What could that possibly  
13 have to do with the issues before you today?

14 **MR. MARTIN:** Because Mr. Porter wasn't listening to  
15 me. What I'm saying is is all these titles  
16 from all these other dealerships go to these  
17 ladies. There's only one place in our  
18 organization that handles titles and it all  
19 goes to this one place. So there's four  
20 dealerships that send their title information  
21 to these ladies, so they're handling a total of  
22 25,000 sales 182 in the three-year period,  
23 which I think goes to show a lack of  
24 willfulness.

25 **THE COURT:** And I'll be glad to take it as an



1 exhibit even over the objections to it.

2 MR. PORTER: (Inaudible)

3 MR. MARTIN: Fair enough.

4 THE COURT: It just basically shows the four  
5 dealerships that the ladies are dealing with  
6 the paperwork.

7 MR. MARTIN: Thank you, Your Honor.

8 (Respondent's Exhibit Number 11 was admitted into  
9 evidence.)

10 Q: All right, Bob. If you have -- the question  
11 before we messed up with those documents, and  
12 I apologize, was if you were shut down for a  
13 week, what would it cost you in sales?

14 A: At the Toyota specifically in sales for front  
15 end about \$2.1 million.

16 Q: Okay. And how many employees will lose their  
17 paycheck for a week?

18 A: Everybody in the building. Last count, you  
19 know, it moves month to month, I think is 86 or  
20 87 employees.

21 Q: 86 or 87 employees, okay. And if some customer  
22 in Greer wants to buy a car, a Toyota, would  
23 they be able to?

24 A: Not in Greer.

25 Q: Okay. Now, do you have procedures set up to



1 make sure that these titles are processed  
2 within the 45 days requirement?

3 A: Yes, we do.

4 Q: And just quickly describe how that works and  
5 how many people you've got to do that.

6 A: Well, we have a centralized accounting  
7 department and Jim Hutchinson is our -- is the  
8 partner and CFO and he put some structures in  
9 place. Obviously, the first thing we did when  
10 we moved to town was we met -- you know, to get  
11 up and get going, we met with the people at the  
12 DMV. At that time, it was two brothers, two  
13 characters, Mr. Mill and Mr. Paden. And we met  
14 and we went through the DMV procedures with him  
15 and we asked him about -- you know, my  
16 background was 20 years with Toyota in five  
17 states and each state has a little different  
18 law as it relates to, in particular, for  
19 instance, selling cars without a title,  
20 possessing title in your hand. And so we  
21 wanted to make sure that we had the rules and  
22 we were told, obviously, there's no rule that  
23 you had to physically hold the title in order  
24 to retail the car. But we put these procedures  
25 in place for a variety of reasons. Number one



1 is to make sure that the consumer's happy and  
2 we get them the title in a timely fashion and  
3 we meet the requirements of the DMV. The  
4 second thing is to make sure that we comply  
5 with the third-party lenders that we do  
6 business with because they also have rules and  
7 when they want their lien receipts by a certain  
8 amount of time. And we put centralized  
9 accounting in and we have reports where we  
10 track it everyday, you know, try to keep in  
11 front of the manager's face to make sure we get  
12 the pay-off on time and the titles on time.  
13 And it's a lot of moving parts. I mean, you've  
14 got -- you know, when you do one transaction,  
15 you may be handling three titles on that one  
16 transaction. And I think they do a remarkable  
17 job for the amount of work they take up there.

18 Q: I'd like to show you what's labeled as the  
19 organizational flow chart and tell me if you  
20 can identify that.

21 A: Okay. Yes.

22 Q: What is that?

23 A: That is a flow chart the way that the deals  
24 flow through -- once a transaction's done  
25 downstairs, we have all these people set up



1 upstairs in a secure location. No one from  
2 downstairs can get up there. We keep it  
3 secure. And we have it kind of broken down.  
4 Jimmy has a ~~map~~ has it broken down into sort of  
5 pods with Russell Antici being sort of the lead  
6 controller and then you have these different  
7 people that are responsible for a variety of  
8 things per store.

9 MR. MARTIN: I'd like that moved as an exhibit if  
10 there's no objections.

11 THE COURT: Any objection to the exhibit, Number 12?

12 MR. PORTER: Same objection, Your Honor, with regard  
13 to the other dealerships.

14 THE COURT: Well, we'll go ahead and enter it in as  
15 Exhibit Number 12. It's just a flow chart that  
16 shows really nothing other than how the  
17 transactions ---

18 A: Play.

19 THE COURT: --- occur.

20 (Respondent's Exhibit Number 12 was admitted into  
21 evidence.)

22 Q: And this chart shows four dealerships, Toyota  
23 of Greer, Kia of Greer, Hyundai of Greer, and  
24 Nissan of Greer, correct, Bob?

25 A: Yes, sir.



1 Q: And do all those titles show up with these  
2 ladies?

3 A: They all end up there.

4 Q: Okay. Now, we've heard some talk about the  
5 issue of putting cars on the back lot. Can you  
6 speak to what the company's procedure is and  
7 why your procedure is the way it is with  
8 respect to a car that you get in as a trade-in,  
9 may not yet have the title?

10 A: Well, there's a couple reasons. You get the  
11 car and the first thing we do if we want -- we  
12 do put it on the back lot initially and we have  
13 the car inspected and brought to the service  
14 department. Back up just a second, we first  
15 make a decision whether we want to keep that  
16 car or retail it, it's a retail piece for a  
17 customer. Or, like the car -- the junk car  
18 that was sold to the -- to the auction, we  
19 don't want to keep that and put a customer in  
20 it. Once we make the determination we want the  
21 car, we run it through the shop, have it safety  
22 inspected, make any repairs on the vehicle.  
23 And then we want to have the car available for  
24 the consumer and -- and, obviously, it's cash  
25 -- it's cash. We own those cars cash and we



1 need to get them up and ready within 72 hours  
2 and we get them up front and get them on the  
3 front line available for consumers.

4 Q: Okay. Well, what happens if you get a car in  
5 and you have a customer who says, I can't get  
6 you the title because I lost it? What's your  
7 normal experience with that?

8 A: We get the title.

9 Q: Within the time period required?

10 A: Absolutely. Absolutely. Overwhelmingly.

11 Q: Okay. How about if you've got a lender that  
12 has a lien they forgot to satisfy, what happens  
13 in those situations normally?

14 A: We usually get it then, too, we always have.  
15 You know, there are situations that become as  
16 in three deals when you're depending on other  
17 people -- I will say this, since the economy  
18 crash and the bank crisis in 2008 and all that  
19 precipitated and all these lenders  
20 consolidated, you know, TD Bank was one here in  
21 town that bought Carolina First. We did a  
22 tremendous amount of business with Carolina  
23 First (inaudible) department. It's like a  
24 nightmare getting titles and getting lien  
25 releases from TD Bank. They can't seem to find



1           them. They've lost them because they're part  
2           of the Carolina First. Title loan companies  
3           that they open up and they go out of business  
4           and you can't track these people down. There  
5           have been instances where we literally never  
6           could find these people and we just had to send  
7           the car to the junkyard and write it off. It  
8           is a very difficult thing. But we do a really  
9           good job. We make no willful decision not to  
10          get a customer their tag and title. I mean, it  
11          would be counter-productive to what we're here  
12          to do. We don't want to fight with the DMV.  
13          We want to get along. We've always gotten  
14          along. We're an honest car dealer. And we  
15          work hard to make sure that we comply with all  
16          the rules for all the reasons.

17        Q:     Out of the 25,182 deals you've done in the last  
18           three years, what percent would have a problem  
19           where if you didn't have the title on the day  
20           you put the used car on the lot, that it would  
21           cause a problem? What percent of those  
22           details, in your experience?

23        A:     I mean, minuscule. Minute. We get the titles.

24        Q:     Okay.

25        A:     We're on it.



1 Q: Do you know of any time that you would have  
2 been a -- done anything that's been arbitrary  
3 or in bad faith or unfair in the handling of  
4 these titles?

5 A: No, sir.

6 Q: Do you know of any time that you instructed  
7 your employees to willfully ignore the  
8 procedures of the DMV?

9 A: Quite the contrary.

10 Q: Okay. You've been in the courtroom all day  
11 today and you heard the testimony about the  
12 three deals that are in -- at issue today.

13 A: Yes, sir.

14 Q: Was there any of those deals that was not a  
15 dealer -- a lender issue or a customer issue?

16 A: They were all dealer or customer -- I mean, a  
17 lender or customer issues.

18 Q: And what is your understanding of the DMV's  
19 only -- their own rules regarding what is  
20 willful, if it's a problem with a lender and  
21 not Toyota of Greer or if it's a problem with  
22 a customer that sold you a car and doesn't get  
23 you the title? What is your understanding of  
24 the DMV rules regarding willfulness?

25 A: Well, according to the law, it has to be a



1 willful act. And certainly we've not made any  
2 willful act at all in these three deals or in  
3 any other deals. As I said, it would be  
4 counter-productive to do that.

5 Q: Right. Thank you. Answer any questions Mr.  
6 Porter may have.

7 MR. HOGAN - CROSS-EXAMINATION BY MR. PORTER:

8 Q: Is it Hogan, is it?

9 A: Yes, sir, Mr. Porter.

10 Q: Good afternoon.

11 A: Thank you.

12 Q: Are you familiar with these deals that we're  
13 talking about today, these three?

14 A: I've become familiar with them and I recall  
15 them, you know, in discussions and following up  
16 on these in the past, yes, sir. But I am not  
17 the expert on them. But I'll help you as much  
18 as I can.

19 Q: What's that document?

20 A: This is an affidavit and notification of sale  
21 of a motor vehicle.

22 Q: Okay. I'm ---

23 MR. PORTER: Counsel, I'm looking at Petitioner's  
24 12.

25 Q: And who is the lien holder that's listed there?



- 1 A: Wells Fargo Dealer Services.
- 2 Q: Do you know if you heard from Wells Fargo when  
3 they didn't get their title?
- 4 A: I'm -- you lost me on the question. Are you  
5 talking about -- this is the one we sold,  
6 because I'm not ---
- 7 Q: Yes.
- 8 A: Okay. I don't recall, no, sir. I mean, they  
9 generally will, you know, but I don't recall.
- 10 Q: Do you know according to your procedures  
11 whether your salesmen are instructed that this  
12 is in the form of a sworn statement?
- 13 A: I -- you have me confused. Yeah, I guess so.  
14 I mean ---
- 15 Q: Well, how does it start off?
- 16 A: The entire -- the entire form must be typed or  
17 printed. Personally appeared before me, blah,  
18 blah, blah, so they did a -- yeah, and says we  
19 placed a lien -- you know, we were placing a  
20 lien on a car we sold, yes, it's Wells Fargo.  
21 Correct.
- 22 Q: And you didn't know about the other one?
- 23 A: You lost me. Didn't know about what other one?
- 24 Q: The one that caused the title to be delayed.
- 25 A: You're gonna have to take me to the beginning



- 1           because you're jumping all over. Walk me  
2           through what you're asking. I'm not trying to  
3           be evasive. I'll answer as honestly as I can.  
4    Q:       Well, let me get it together.  
5    A:       I'm not sure which of the our deals or three  
6           deals we're talking about.  
7    Q:       Well, I think your witnesses were saying that  
8           they had trouble getting through to this  
9           gentleman, correct?  
10   A:       Is this the last one from North Carolina?  
11   Q:       Yeah ---  
12   A:       I remember hearing about ---  
13   Q:       Mr. Gorman.  
14   A:       Right. But you asked me about a lien -- a slip  
15           that we promised to file a lien in favor of  
16           Wells Fargo when we did that.  
17   Q:       Yeah, I did ask you that.  
18   A:       Right.  
19   Q:       And you answered the best you could, which is  
20           I understand you don't know.  
21   A:       Well, that's right. But, obviously, we filed  
22           a lien with them, yes.  
23   Q:       Right. And you said you do put cars on the so  
24           called back lot. I don't know whether you have  
25           a lot in the back or the front, but you have a



1 not for sale lot, correct?

2 A: Immediately after the car is sold, we take it  
3 to the -- what we call the get ready line.  
4 They go all the way to the back and then the  
5 used car manager or new car manager typically  
6 every day will walk through -- I'm talking  
7 about for the trades. They go back there and  
8 walk the trades and decide which ones they want  
9 to keep or which ones they want to wholesale  
10 and so forth, yeah.

11 Q: And you did say -- or tell me if it's true that  
12 according to your procedure, you will sell a  
13 car if you don't have a title for it yet,  
14 right?

15 A: If we don't have the title physically in  
16 possession, yes, we will.

17 Q: Okay.

18 A: And I'm not aware of any law that prohibits  
19 such at all. In fact, to the contrary, I was  
20 informed by the DMV, Mr. Paden, that that was  
21 not a law in South Carolina.

22 Q: Mr. who?

23 A: Paden. Bill Paden. He had this gentleman's  
24 job when we opened up, I know from '03 to '06,  
25 7, 8, somewhere in there.



1 Q: Is it your testimony Mr. Paden ever said it was  
2 acceptable to not ---

3 A: That's exactly my testimony, that he said it  
4 was fine if you sell a car ---

5 Q: If you don't mind, let me finish my sentence.

6 A: Okay.

7 Q: --- that it was acceptable to allow more than  
8 45 days to elapse before you get a title to  
9 your customer?

10 A: Oh, no, no, no. He didn't say that. He just  
11 -- you were talking about the other thing.  
12 (Inaudible)

13 Q: Well, let me make sure I understand what you  
14 were trying to say.

15 MR. MARTIN: Let him finish, please, Your Honor. Go  
16 ahead, Bob.

17 A: You were saying -- you're talking about 45 days  
18 to get a customer tags. Before that, you were  
19 talking about was it acceptable to sell a car  
20 without a title in possession and I said that  
21 he specifically stated, and we've even gotten  
22 recent rulings, that we can sell a car without  
23 physically holding the title as long as we've  
24 been given good faith and Form 400 and all the  
25 different forms in order to obtain that title.



1 As ~~the~~

2 Q: When you say -- I'm sorry.

3 A: As for the -- you know, getting the title in 45  
4 days, obviously, we know we need to do that.  
5 The clock's running. We get on it and we do  
6 that 99.999999 percent of the time, as all  
7 evidence shows. We would never wilfully not  
8 give a customer a title. It would be -- why  
9 would I want to make a customer angry at me?  
10 I want them to come back. I don't want to have  
11 a problem with y'all; I want to have a problem  
12 with nothing. We're on it. And to the best of  
13 our ability we do it diligently all the time.  
14 I'm sorry that we're here today, but it's not  
15 my fault.

16 Q: Well, I think I understood you to say that  
17 after Mr. Paden, you got some word from the  
18 Department that it was okay to sell subject to  
19 lien. Now, does that -- does that include only  
20 the situations where you're paying off a lien  
21 that you know about?

22 A: No, I mean, if we take a vehicle in on trade  
23 and we promise -- the most overwhelming  
24 majority of people do not have their title with  
25 them and like I just went through a couple of



1 weeks ago, my son lost his title. I mean,  
2 people lose their titles all the time. They  
3 don't keep it in a safe place or they don't  
4 physically have the title. Now, we deal with  
5 states and not only -- they trade it from one  
6 state and they don't even have paper titles.  
7 It's all electronic. It's a -- it's amazing  
8 that we do as well as we do. It's very ---

9 Q: We'll be getting there here. Correct me if I'm  
10 mistaken, one way to eliminate even the  
11 problems that you had, the limited number of  
12 problems that you've had, if you make sure you  
13 have the title in hand before you sold it, you  
14 wouldn't have these complaints, would you?

15 A: Well, yes, but that's not a realistic practice.  
16 I mean, the customer's gonna go right down the  
17 street and buy that car from another dealer who  
18 -- the dealers in this state do not wait until  
19 they physically have the title before they sell  
20 a car. They can't. This thing is so capital  
21 intensive and so competitive. If it was a rule  
22 for everyone, it might be a different subset,  
23 but it's not. And we have to compete in the  
24 marketplace and we have to make calculated,  
25 reasonable guesses and 99.999 percent of the



1 time, we're okay. We've got three deals and  
2 these are not willful acts. I promise you. We  
3 wouldn't do that.

4 MR. PORTER: Nothing further.

5 MR. MARTIN: That's our case, Your Honor.

6 MOTION FOR DIRECTED VERDICT:

7 MR. MARTIN: And I would move for a directed verdict  
8 now that all the evidence is in. We know what  
9 the legal standard is. There's been no  
10 evidence of arbitrary, bad faith, or  
11 unconscionable under the Dealer's Act. And  
12 under the point system, two of their witnesses  
13 clearly admitted that there's not willfulness  
14 under their own definition. As a matter of  
15 law, we ought to win right now.

16 THE COURT: We don't give our decisions the day of.  
17 I will do an order and that's when I'll make my  
18 decision once I get all my findings of facts  
19 and conclusions and everything. We'll -- I'm  
20 sorry.

21 MR. PORTER: Go ahead. I didn't mean to cut you  
22 off.

23 THE COURT: We're a little past one o'clock. I  
24 don't know exactly where they're coming from.  
25 Is there closing that we can do in a very short



1 period of time?

2 MR. PORTER: I -- I just wanted to respond to a  
3 little bit of what counsel said. First of all,  
4 it's all based on a mischaracterization of our  
5 notice in which we didn't mention willful  
6 violation. Now, I think we might disagree on  
7 exactly what willful constitutes because once  
8 you violate the law and know there's a  
9 possibility that you will violate the law and  
10 go past the 45 days, there's a consequence to  
11 that. There's a consequence to your customer  
12 and there's a legal consequence, as well. Now,  
13 I'm not here to say that anyone associated with  
14 the dealership is guilty of any evil motives.  
15 The fact is once you violate the law, that is  
16 an element of willfulness. And I've got a  
17 couple of cases I'd like to share with you.  
18 One is *White v. Broadway*, 315 S.C. 273, and  
19 *Cartee v. Lesley*, 290 S.C. 333. And they're  
20 about punitive damage type court cases, but  
21 they simply say, in the case of *Cartee*,  
22 punitive damages should be submitted to the  
23 jury when there is evidence of the tortfeasor's  
24 conduct, a willful, wanton or in reckless  
25 disregard of the rights of others, okay. And



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1 Broadway indicates the violation of the statute  
2 does not constitute recklessness, willfulness,  
3 and wantonness per se, but it is some evidence  
4 that defendant acted recklessly or willfully.  
5 And I would submit that for your consideration.  
6 It's at least a jury question.

7 THE COURT: Counsel, you were provided with copies?

8 MR. MARTIN: No, we -- we were not, but I'll be glad  
9 to get the citations from you since we don't --  
10

11 MS. TEER: I got them.

12 MR. MARTIN: You got them. Okay.

13 MS. TEER: There were two, of them, correct?

14 MR. PORTER: Yeah, I only gave South Carolina. I'll  
15 be happy to tell you the Southeast, as well.  
16 I think I can. *White v. Broadway* is 433 S.E.2d  
17 857. *Cartee* is 350 S.E.2d 83, 88.

18 MR. MARTIN: If I could do a brief reply. He's  
19 talking about tort cases, bad faith cases.  
20 We're talking about the South Carolina  
21 Department of Motor Vehicles dealer sanctions.  
22 There's a specific definition written by the  
23 Department of Motor Vehicles themselves that  
24 deal exactly with this case. This is  
25 Petitioner's Exhibit Number 5. It is the



1 procedures that the dealers are required to  
2 operate under. I've read it a million times,  
3 but it's more important to read it again. They  
4 define a willful failure to deliver a title  
5 complaint, not to create a tort, kill someone  
6 in an accident, but a willful failure to  
7 deliver title. Dealers are required to execute  
8 an assignment of title to the buyer and deliver  
9 the title to the buyer or the DMV within 45  
10 days of the date of sale. The quote, failure  
11 to deliver title violation, end quote, is not  
12 considered willful if the dealer can provide a  
13 written statement which is substantiated by a  
14 dealer licensing and audit unit agent  
15 identifying a prior seller or lien holder who  
16 has failed to deliver the title as required by  
17 law. The only testimony you have is of Mr.  
18 Benjamin who said yes, I do substantiate what  
19 my dealer says. Every time they send me a  
20 document and they give me a written  
21 explanation, I have no reason to doubt it. You  
22 do accept that explanation. So the only  
23 evidence before this Court using their  
24 definition of willful is every single one of  
25 these incidents, the three incidents, was



1           caused by a prior seller or a prior lien  
2           holder. So under their own definition, it  
3           cannot be willful and we never should have been  
4           here today. And we are asking you to simply  
5           apply the law that they put us on notice and  
6           the other thing they did in the letter was they  
7           sued us under the Dealer's Act and they haven't  
8           really even pursued the Dealer's Act provision,  
9           but that's required in the -- the Dealer's Act  
10          requires something to be unfair, arbitrary, or  
11          in bad faith -- unconscionable, arbitrary, or  
12          bad faith. There's been no evidence of any  
13          kind of arbitrary, bad faith, or  
14          unconscionable. These ladies did their jobs  
15          the best they could. So I think the Dealer's  
16          Act is out as a matter of law and when you  
17          apply their own rule about a willful failure to  
18          provide a tag in 45 days, they can't strike out  
19          the word willful and then these people say  
20          we're gonna get you, 45 days no matter what.  
21          We're gonna take willful out. They're required  
22          to follow their own rules. And there's  
23          absolutely no evidence whatsoever that my  
24          dealership in any way, shape, or form did  
25          anything willfully. And we would ask that you



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1 make that decision and we'll be glad to answer  
2 any questions you might have.

3 **THE COURT:** We will review the evidence and  
4 testimony presented and recorded during this  
5 case. The case is now closed.

6 (There being nothing further, the hearing was  
7 concluded.)

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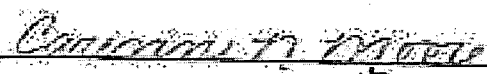
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**CERTIFICATE**

This is to certify the transcript of the hearing consists of one hundred ninety seven (197) pages. This transcript was prepared by me without the benefit of my being present during the hearing. Additionally, this transcript was prepared from a audio recording provided to me.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this March 1, 2018.

  
Carenn N. Moore  
Notary Public for South Carolina  
My Commission Expires: 3/24/2019

17-33-15 Respondent Exhibit A

INVOICE NO.



TIRE COND  
11:31



AMERICA'S  
AUTO AUCTION

2415 Highway 101, Bldg. 2  
Greer, SC 29615  
Phone: (864) 801-1189  
Fax: (864) 831-1034

TITLE NUMBER: 7-00003-00000  
STATE: SC  
SALE DATE: 2/26/2016  
PIN NO.: T 0105

BID NO.  
0622

STOCK NO.: 131514  
DATE: \_\_\_\_\_ INITIALS: \_\_\_\_\_ DATE: \_\_\_\_\_ INITIALS: \_\_\_\_\_

YEAR: 2000 MAKE: CHRYSL MODEL/SUB SERIES: 300M BODY: 4DR COLOR: PUR AT AC CD PS PB TITLE: BW TW 06CY VIN: 2C3HE66G4YH198153

YELLOW	GREEN	RED	BLUE
		XX	*T/A*
LITEN	WITH DRIVE	AS IS	TITLE ATTACHED

SELLER / TRANSFEROR: T04800  
TOYOTA OF GREER  
13770 E WADE HAMPTON BLVD  
GREER, SC 29651  
License #: 30643

EXEMPT 213677 DIGITAL  
SELLER'S CHECK \_\_\_\_\_ DATE: \_\_\_\_\_  
CLERK \_\_\_\_\_  
 HAND DELIVERY  
 MAILED

**ODOMETER DISCLOSURE STATEMENT Section 580.5 Disclosure form.**

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

- (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.
- (2) I hereby certify that the odometer reading is NOT the actual mileage -  
**WARNING ODOMETER DISCREPANCY**  
TOYOTA OF GREER

Printed: 2/26/2016; 11:31:07

I, OR WE BY USE OF OUR PLATE OR AUTHORIZED SIGNATURE, HEREBY AGREE TO PAY THE INDICATED SALE PRICE FOR THE VEHICLE DESCRIBED IN THE ATTACHED VOUCHER UNDER THE TERMS AND RULES OF AMERICA'S AUTO AUCTION.  
PURCHASER / BUYER (TRANSFEREE):

Q00019 Bid# 0622  
QUALITY AUTO OF ANDERSON L  
911 WHITEHALL RD  
ANDERSON, SC 29625  
License: 37456

state that the odometer now reads 213677 miles (no tenths) and to the best of my knowledge that it reflects the actual mileage of the vehicle described above, unless one of the above statements is checked.

X X   
TRANSFEROR'S SIGNATURE (SELLER) PRINTED NAME OF SIGNOR

- \* NO RETAIL SALES
- \* ALL VEHICLES SOLD TO DEALERS FOR RESALE ONLY WITHOUT WARRANTY
- \* AUCTION ASSAULTS NO WARRANTY BUT DOES GUARANTEE THE ACCURACY OF THE ODOMETER READING.
- \* AUCTION ACCEPTS NO RESPONSIBILITY FOR THEFT, LIABILITY OR PROPERTY DAMAGE.
- \* AFTER 3 DAYS BUYER WILL BE ASSESSED \$2.00 A DAY FOR STORAGE.

BUYER INFORMATION: CHECKING: 1890 BIRTH DATE: 2-26 CASH NO: 067 CREDIT CARD: 2-26

SCOTT BOCOOK  
PRINTED TRANSFEREE'S NAME (BUYER)

OFFER \$ \_\_\_\_\_ TOTAL \$ \_\_\_\_\_  
BUYER'S FEE \$ \_\_\_\_\_  
SELLER  
 ACCEPTED  
 COUNTER \$ \_\_\_\_\_  
REPRESENTATIVE \_\_\_\_\_  
BUYER  
 ACCEPTED  
 DECLINED  
 COUNTER \$ \_\_\_\_\_  
REPRESENTATIVE \_\_\_\_\_  
OFFICE  
CLERK \_\_\_\_\_  
TIME COMPLETE \_\_\_\_\_

SELLING PRICE \$ 300.00  
BUYER'S FEE \$ 105.00  
OTHER CHARGES \$ \_\_\_\_\_  
AMOUNT DUE \$ 405.00

AUCTIONEER: ET CLERK: COREY

THIS IS A FIRST-PRIORITY AUCTION BETWEEN THE BUYER AND SELLER. NO WARRANTY IS GIVEN BY THE SELLER. THE BUYER'S RESPONSIBILITY IS TO INSURE THE VEHICLE PRIOR TO THE AUCTION. THE AMERICA'S AUTO AUCTION GREENVILLE DEALER REGISTRATION FEE IS \$10.00. THE BUYER'S RESPONSIBILITY IS TO PAY THE REGISTRATION FEE PRIOR TO THE AUCTION. THE BUYER'S RESPONSIBILITY IS TO PAY THE SALES TAX PRIOR TO THE AUCTION. THE BUYER'S RESPONSIBILITY IS TO PAY THE LICENSE FEE PRIOR TO THE AUCTION. THE BUYER'S RESPONSIBILITY IS TO PAY THE TITLE FEE PRIOR TO THE AUCTION. THE BUYER'S RESPONSIBILITY IS TO PAY THE SALES TAX PRIOR TO THE AUCTION. THE BUYER'S RESPONSIBILITY IS TO PAY THE LICENSE FEE PRIOR TO THE AUCTION. THE BUYER'S RESPONSIBILITY IS TO PAY THE TITLE FEE PRIOR TO THE AUCTION.

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# National Arbitration Policy: In-Lane and Online

## I GENERAL POLICIES

1. **Fair and Ethical Sale:** The sales made at an Auction are intended to promote fair and ethical treatment to both the Buyer and Seller. If Auction determines that the transaction is not fair and ethical to either party, the Seller and the Buyer agree that Auction may cancel the sale, at its sole discretion. Federal, State, and Local laws supersede these policies where applicable. This provision also applies to any clerical or administrative error made by Auction. Any arbitration conducted at Auction is subject to the Terms and Conditions of the Auction.
2. **Auction Role In Sale:**
  - a. Auction makes no representations or guarantees as to the description, equipment, warranties, service policy, title status/accuracy, or odometer on any vehicle sold or offered for sale.
  - b. Auction is not a party to the contract of the sale. The sales contract is between the Seller and Buyer only. The Seller is required to give the Federal Odometer Mileage Statement in connection with any auction sale as required by the Motor Vehicle Information and Cost Savings Act of 1972 or any other applicable laws. Auction is not responsible for the accuracy of odometer readings, odometer statements, or damage disclosure statements.
  - c. All vehicles bought or sold on the premises must be processed through the Auction office. Failure to do so will result in suspension of trading privileges at Auction.
3. **Lot Sales/Outside Sales**
  - a. Any sale in which the Auctioneer does not state the selling price of the vehicle or "sell under the hammer" is considered a "Lot Sale".
  - b. All "Lot Sales" are conditional until the buyer signs the block ticket or appropriate document for the vehicle signifying they have inspected and accepted the vehicle. Until the appropriate document is signed, the sale is not binding to either party.
  - c. Sellers may guarantee "Lot Sales", but must do so in writing. Vehicles sold after crossing the block are still subject to the announced conditions noted on the Auction sales receipt. These transactions are subject to the terms noted in the Disclosure/Discovery section of the policies.
  - d. Buyers are cautioned to inspect "Lot Sale" vehicles very carefully and verify announced conditions before purchasing.
4. **Auction VIN Policies**
  - a. All vehicles consigned must have a public Vehicle Identification Number (VIN) plate attached to the vehicle. Those vehicles having a reassigned VIN plate by the State in place of the original VIN plate must be announced or will be subject to sale cancellation or Buyer return. Auction reserves the right to refuse the sale of any vehicle in which the VIN plate appears to be altered in any way.
  - b. Seller guarantees VIN plates and years on any vehicle up to 20 model years old with the exception of the VIN plates and year on trailers, RVs, and watercraft, which are guaranteed up to 10 model years.
5. **Auction Right of Review** - Auction reserves the right to review any audio/video documentation to verify the accuracy of a sale.
6. **Auction Exclusions**
  - a. Auction is not bound by information listed in Electronic Data Vehicle Histories (EDVH) (i.e. Carfax, AutoCheck, etc.) and any vehicle may not be arbitrated solely on EDVH data. Auction may investigate vehicle history based on information found in EDVH for information that may impact arbitration.
  - b. Vehicles are not subject to arbitration if they exceed 20 model years, with the exception of trailers, RVs, and watercraft, which cannot be arbitrated if they exceed 10 model years.
  - c. Kit vehicles, homemade vehicles, or modified vehicles are sold "AS-IS" and cannot be arbitrated for odometer, frame, VIN plates, warranty books, or model year.

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## 7. Online Buyer Responsibilities

- a. The Buyer or Buyer's agent (transporter or driver) should note any obvious damage on the gate release prior to removing the vehicle from the Auction or facilitation service provider's location. Auction or facilitation service provider and Seller will not be responsible for any obvious damage not identified on the gate release or the condition report once the vehicle is removed from the Auction or facilitation service provider's location.
  - b. Buyer will inspect the vehicle immediately upon arrival at Buyer's location. The Buyer must verify the Seller's representations and notify the Auction or facilitation service provider immediately of any discrepancies within the time frame as stated in this arbitration policy. Buyer will verify odometer reading upon arrival at Buyer's location. Mileage must be the same as when purchased if arbitrating for inoperable odometer.
  - c. The Buyer is responsible for understanding the Online Bidding/Proxy Bidding and Buy Now procedures for online buying channels.
  - d. It is strongly encouraged that an On-Line Buyer should have a Post Sale Inspection (PSI) on vehicles purchased.
8. **Government Inspection** - All vehicles registered/sold at Auction are subject to inspection, with or without prior notice, by the FBI, State Police, National Auto Theft Bureau, Local Police Authorities, any other governmental agency, or quasigovernmental agency.
9. **Buyer Responsibilities** - The Buyer is responsible for listening to announcements related to each vehicle, made by the Auctioneer or Selling Representative, prior to the start of the sale. The Buyer is also responsible for observing and understanding the sale lights (Green, Yellow, Red, Blue), which identify various sale conditions for the vehicle.
10. **Seller Responsibilities** - All guarantees as stated by the Seller are those of the Seller only. The Seller understands that the sale light/video display is a bidding arbitration representation of vehicle condition, and is therefore responsible for ensuring that their vehicles sell under the correct light in the lane.

## II. SALE-LIGHT / VIDEO DISPLAY SYSTEMS: IN-LANE AND ONLINE SIMULCAST ONLY

1. **Auction System** - Auction has a standardized light/video display system to describe the condition and/or announcements related to the vehicle being sold. The system is defined as:
- a. **Green Light - "Ride and Drive"**: The green light signals that this vehicle is guaranteed under the conditions outlined in the Disclosure/Discovery Arbitration section, except for specific announcements made prior to the sale.
  - b. **Yellow Light - "Announcements"**: This light is an indication to the Buyer that the Auctioneer or Selling Representative has made announcements that qualify/clarify the condition or equipment and limit arbitration of this vehicle.
  - c. **Red Light - "AS-IS"**: Vehicles selling under the red light will only qualify for arbitration under the rules outlined in the Disclosure/Discovery section. (AS-IS dollar amount, model years, and mileage is subject to local auction policy).
  - d. **Blue Light - "Title Attached/Title Unavailable/Title Absent"**: This light is used to announce that the title is not present at the time of the sale. For Auction rules regarding titles please refer to the Title Arbitration Policy section. If "title attached/unavailable/absent" is not announced, a vehicle could be arbitrated for misrepresentation.

## III. DISCLOSURE / DISCOVERY REQUIREMENTS

### Arbitration Guidelines

Vehicles that have any of the following defects, conditions, or discrepancies that were not disclosed or announced at the time of sale must be reported to Auction within the time frame noted below in order to be eligible for arbitration. The only exception is if there is a pending Post Sale Inspection (PSI). Vehicles must be returned to Auction in the same or better condition than when purchased.

1. **By Sales Channel** - Some arbitration policies are sales channel specific. The two sales channels are defined as follows:
  - a. **In-Lane**: All purchases made by a bidder on Auction location property. Vehicles purchased in an online event sale by bidders at a location will be considered "in-lane".
  - b. **On-Line**: Defined as purchases made by a remote bidder via the Internet. Due to the differences associated with purchasing through online channels, such as the inability of the buyer to view the vehicle, additional time parameters and damage disclosure requirements for arbitration have been included.
2. **Time Period**: Definition codes for discovery time periods as set forth below in the Arbitration Matrix (Appendix I):
  - a. All Online arbitrations must be initiated within 2 calendar days of Buyer's verified receipt of the vehicle and cannot exceed 10 calendar days from purchase. Purchase of a Post Sale Inspection (PSI) may increase arbitration timeframes of items covered in the PSI. It is the auction or facilitation service provider's responsibility to inform Seller of any pending PSI or arbitration resulting from the Sale.
  - b. Sale day is day 1.
  - c. Arbitration shall end at the closing time on the last calendar day in the time period. Below are the definitions of the time codes referred to in the Arbitration Matrix Table at the end of this document.

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- I. (A) In-lane - Sale day only
  - II. (B) In-lane - 7 calendar days
  - III. (C) Online - 2 calendar days upon verified arrival to Buyer not to exceed 10 calendar days from purchase.
3. **Process** - The arbitrator will inspect only the defect(s) which are on the arbitration form/documents. Each vehicle transaction is allowed one chance at mechanical, electrical, or cosmetic arbitration. If price adjustment is made and accepted, vehicle becomes "AS-IS" property of the Buyer, and is not subject to any further arbitration for mechanical, electrical, or cosmetic defects or adjustments. The decision of the arbitrator is final and binding to both Buyer and Seller.
  4. **Fees** - Auction reserves the right to assess an arbitration fee to the Buyer. Any arbitration must be properly documented in writing and signed by the arbitrator. If the arbitration is valid, Auction reserves the right to assess an arbitration fee to the Seller. This fee is in addition to any charges associated with the arbitration procedure; such as check out fees at a specialty shop or transportation costs to and from a garage, etc.
  5. **Exclusions:**
    - a. **Noise and Inherent Conditions:** No arbitration can be based on noises or conditions that are inherent or typical to a particular model or manufacturer, unless deemed "excessive" by the arbitrator on non-warranty items. OEM dealer warranty guidelines will be used where applicable to determine whether the condition is excessive.
    - b. **Manual Transmissions:** Vehicles with standard transmissions cannot be arbitrated for manual clutches unless the defect will not allow a safe test drive.
    - c. **Wearable Items:** Auction will not arbitrate vehicles for wearable items. For purposes of this policy wearable items are defined as parts of the vehicle that the manufacturer recognizes the need for replacement/adjustment during the expected life of the vehicle. These items are normally identified in the Owner's Manual for routine check and replacement and would include, but not limited to: tires, wipers, brake pads, shoes, rotors, belts, hoses, lubricants/fluids, timing belts, bulbs, filters, shocks & struts.
    - d. **As-Is:** Any In-lane or online vehicle sold "AS-IS" is NOT subject to mechanical, electrical, or cosmetic arbitration. AS-IS selling price, model years, and mileage is subject to local auction policy.
    - e. **Unsafe vehicles:** Auction reserves the right to reject any vehicle that management judges to be unsafe.
  6. **4x2 Disclosure Rule:** All multipurpose and utility-type vehicles are assumed to be 4X2 unless otherwise announced. However, if a 4X2 multipurpose, utility-type vehicle or pickup has been altered in appearance or stance to resemble a 4X4, a 4X2 announcement will be required. Examples include: new badges, raised suspension, and off-road tires.
  7. **Arbitration by Selling Channels:**
    - a. **All Selling Channels - Seller** will be held responsible for the accuracy and completeness of all representations or descriptions. This includes handouts, catalogues, vehicle markings, and verbal or written statements made by Seller or Auctioneer at the time of sale, independent of vehicle "light" designation or guarantee offered. This includes all vehicles offered for sale either in-lane or on the Internet including all images and text representations made by Seller, licensee or Seller's agent including 3rd party condition reports or vehicle listing agents at the time of sale. This includes, but is not limited to year, make, model, odometer reading, equipment, and announced conditions. Repair costs will be determined by the auction and will reflect the auction cost to repair.
    - b. **In-Lane:** Any single mechanical or electrical defect that has a repair cost of \$500 or more is subject to arbitration on Green Light vehicles. Single defects less than \$500 are deemed minor and not subject to arbitration. Auction will not arbitrate visible defects or announced conditions.
    - c. **Online:** Sellers who sell to online buyers through any of the online channels and provide a condition report have the additional responsibility to disclose defects or damage that are "visible" in nature. The Seller must disclose damage (but not actual repair cost) with a cumulative auction (wholesale) repair cost in excess of \$500. Undisclosed cumulative damage in excess of \$500 is subject to arbitration by the Buyer due to an inadequate disclosure of damage or condition. Actual images of the listed vehicle must be used unless proper disclosure is noted by the Seller which makes it known the actual vehicle is not shown.
    - d. **Online Without Vehicle Condition Information:** Vehicles sold through online channels without a written condition report, inspection, or a disclosure as to the vehicle's condition, will be subject to In-Lane policies (b) as detailed in this policy.
  8. **Seller Fees:** The Seller is responsible for reimbursement of all reasonable documented expenses incurred by the Buyer (excluding profit, commissions, and detail charges) on vehicles arbitrated for unannounced conditions not detectable through vehicle inspection (i.e. stolen vehicle, theft recovery, odometer discrepancy, title discrepancy, frame damage, flood damage, salvage, manufacturer buyback, etc.). Expense reimbursements will be at the sole discretion of Auction and will, at times be limited to reasonable and documented expenses and transportation only.

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**B. Assignment Title Timelines**

- a. Seller has up to a maximum of 30 calendar days for title to be received by Auction (sale day is day 1).
- b. After the 30th calendar day the Buyer must give the Auction a 48-hour notice. After 48 business hours, the Buyer has the option to return the vehicle or to wait a reasonable period of time for the title.
- c. **Buyer Responsibilities:** The Seller/Auction shall not be liable for any vehicle sale or repairs made by the buyer before the title is received by the buyer. If the title has been mailed from Auction to Buyer, Buyer may not return vehicle. Buyer is required to notify Auction in a timely manner consistent with Auction policy before returning vehicles. If a valid negotiable title is presented within the Auction policy notice period, the transaction will stand.
- d. If, after 90 calendar days, Seller has not produced negotiable title and Buyer has not returned the vehicle, this title guarantee shall not apply and Auction shall have no duty to produce the certificate of title to the Buyer and shall have no duty to pay Seller.

**10. Seller Title Disclosures - (Subject to Auction Title Policy):**

- a. Vehicles lacking a properly assigned title or reassignment to transfer a title at time of sale must sell "Title Attached/Title Unavailable/Title Absent", unless announcement is not required within the region.
- b. Vehicles lacking lien release or a valid repo affidavit for a repossessed vehicle (where allowed by law) must be sold "Title Attached/Title Unavailable/Title Absent", unless announcement is not required within the region.
- c. Any and all "Title Brands" or discrepancies which may affect a vehicle's value must be announced. Some examples include, but are not limited to: Salvage, Previous Salvage, Not Actual Miles, Odometer replacement, Lemon Law, Rental/For Hire, Reconstructed, Stolen Vehicle, Exempt, Theft Recovery, Flood/Fire histories, disclosure requirements (if required by state; i.e. 25%) and insurance transfers.

**11. Auction Title Indemnity -** In regard to defect in title, and in any matter relating to odometer mileage, odometer statements, or damage disclosure statements: Seller and Buyer agree to indemnify and hold harmless Auction from any liability, loss costs, damage or expenses, including attorney fees which may arise either directly or indirectly from the sale and purchase of the consigned vehicle including but not limited to title services provided.

**12. Buyer Delivery Responsibility:** Auction will not be responsible for titles mailed from Auction and not received by the Buyer. Buyer has the choice of alternative delivery method and will pay Auction for such service.

**13. Seller Additional Fees:**

- a. Seller will be responsible for the buy fee plus reasonable transportation expenses to and from the Buyer's dealership to Auction on vehicles returned for "no title".
- b. Titles received after the maximum time defined in Auction Title Policy (Auction Choice) may be subject to a late title fee. All expenses to obtain title will be charged to the Seller.

**14. Seller Mileage Announcements:** Mileage announcements are not required on vehicles deemed exempt from Federal/State Odometer and Title disclosure laws unless a mileage discrepancy is known or apparent to the seller. The Seller may represent miles on exempt vehicles - any statement made by the Seller and all known odometer discrepancies are grounds for arbitration.

**VI. GRAY MARKET & CANADIAN VEHICLES**

**1. Eligible Vehicles -** Only vehicles made in North America for Canadian use and properly converted to U.S. specifications can be sold and must be announced as such. No other Gray Market vehicles are accepted for sale.

**2. Seller Responsibilities:** Seller must inform Auction that a vehicle has Canadian history at time of registration and must disclose that to the Buyer in writing as an announced condition on the block ticket unless the car is (5) years or older.

**3. Proper Conversion**

- a. If a vehicle was manufactured in Canada for the Canadian Market, the Manufacturer is required to obtain and affix a U.S. Safety Standard Certification Label to the vehicle.
- b. All other vehicles imported from Canada must be imported through a Registered Importer. Registered Importers are required to post a bond with the U.S. Department of Transportation. All vehicles imported through a Registered Importer must have:

- I. U.S. Safety Standard Certification Label that identifies the Registered Importer
- II. Valid U.S. Title

c. All Canadian vehicles, whether imported by a Manufacturer or a Registered Importer, must show miles per hour on the speedometer and miles traveled on the odometer. Title 49, United States Code, Chapter 327, Section 32704, allows replacement odometers without a door frame sticker if the conversion from kilometers to miles can be done without changing the distance traveled by the vehicle; therefore, replacement of an odometer under these circumstances does not have to be announced by the Seller.

**4. "Gray Market Vehicles" will not be accepted for sale unless they meet ALL Federal D.O.T. / EPA Mandated Guidelines. Documentation must be provided. Sellers will not offer for sale any European manufactured vehicles.**

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Respondent Vehicle # 3

NOTICE: THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT (FAA), 9 U.S.C. § 1, ET. SEQ. OR, IF AND ONLY IF THE FAA DOES NOT APPLY, THEN PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, S.C. CODE ANN. § 15-48-10, ET. SEQ. THE TERMS AND CONDITIONS OF ARBITRATION ARE CONTAINED IN THE DEALERSHIP'S ARBITRATION POLICIES AND PROCEDURES.

CUSTOMER'S PURCHASE ORDER AND AGREEMENT

FORM # 102397

Salesman: **CORREIA, FERNANDO**      Customer No: **2283470**      Date: **01/25/2016**

Customer: **JAMES THOMAS DERRICK**      DOB:      Driver's License #

Co-Customer: **CATHERINE SAMS DERRICK**      DOB:      Driver's License #

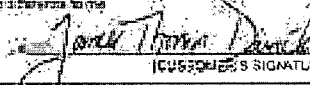
Address: **31 [REDACTED]**      City:      State: **SC**      Zip: **29561**

Resident Phone:      Country: **GREENVILLE**      Business Phone:

Please Enter My Order for the following:     New    Used    Demo

Vehicle: **TOYOTA**      Model: **TACOMA**      Body Type: **TRD Sport**      Year: **2016**      Stock # **79888A**

Color: **Inferno**      ID: **9 T N A 7 5 C M 8 8 B 4 0 0 3 1 8 4**      Weight: **1376**      Key #

VEHICLE MAKE (MADE IN AMERICA) OTHER COUNTRY				VEHICLE PRICE	
MAKE: <b>FORD</b>	MODEL: <b>EXPLORER</b>	TYPE: <b>MP</b>		VEHICLE PRICE:	<b>34995.00</b>
CYL: <b>4</b>	YEAR: <b>2007</b>	MILEAGE ON TRADE: <b>58761</b>		DEALER INSTALLED OPTIONS:	
AUTOMOBILE BILL OF SALE				PRICE WITH OPTIONS:	<b>34995.00</b>
As part of the agreement, I hereby sell and convey to Dealer the above-described vehicle of which I am sole owner and warrant said vehicle to be free and clear of all liens and encumbrances except those listed below. Furthermore, I understand that if the lien amount(s) or "Payoff" is greater than what is listed below, I will be responsible for any such difference. The difference shall be paid within 5 days of the sales date listed herein. If the lien amount or "Payoff" is less than what is listed below, I understand that the difference will be credited back to my account.				TRADE ALLOWANCE:	<b>5000.00</b>
 (CUSTOMER'S SIGNATURE)				NET DIFFERENCE:	<b>29995.00</b>
				CLOSING FEE:	<b>175.00</b> <b>175.00</b>
PAYOFF:				SUB TOTAL:	<b>29820.00</b>
AMOUNT: <b>N/A</b>				SALES TAX:	<b>300.00</b>
CLOSING FEE: Dealer charges a Closing Fee in the amount of \$175. It is a charge that is permitted but not required by law. The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.				TOTAL PRICE OF VEHICLE:	<b>30120.00</b>
NEGATIVE EQUITY: If the Pay-off Balance on your trade-in exceeds the Trade Allowance from the Dealer, the excess amount, or "negative equity", must be either paid by you in cash or financed with your purchase. If financed with your purchase, the amount of any negative equity will be included in the Amount Financed and subject to Finance Charge under the Retail Installment Contract.				PAY-OFF BALANCE - CUSTOMER:	<b>N/A</b>
				TITLE, LICENSE & REGISTRATION:	<b>39.00</b>
				TOTAL:	<b>30159.00</b>
				CASH ON DELIVERY:	<b>1000.00</b>
				BALANCE:	<b>29159.00</b>

DEFINITIONS: As used in this Purchase Order, the terms "I", "Dealer", "Seller", "we", "us", and "you" shall mean the Dealer which is named on the Purchase Order and Agreement, which may become a party to this Agreement only when an authorized representative of the Dealer signs the Purchase Order and Agreement; and (b) "Customer", "Customers", "Co-Buyer", "Purchase", "You", "Your", and "Buyer" refers to the customer(s) buying below.

2. This Customer's Purchase Order is hereby entered into by and between the Customer and **PRICE AUTOMOTIVE INC. DBA PRICE OF AUTO** (hereinafter referred to as "Dealer") and the terms, conditions, and disclosures set forth in this Purchase Order. This Purchase Order represents the final agreement between the parties related to the sale of the vehicle and may not be corrected, amended, or otherwise modified in any way. Any terms, conditions, or disclosures set forth on other documents provided by the Dealer, including but not limited to the Dealer's website, are hereby incorporated into this Purchase Order. The terms of this Agreement may be modified only as agreed to by the Customer and an authorized representative of Dealer. The interpretation and enforcement of this Purchase Order shall be governed by the laws of the State of South Carolina, except as to the portion, which shall be governed by the FAA.

3. LIMITATIONS OF WARRANTY: If you are purchasing a new vehicle, the Dealer warrants that the vehicle is a new vehicle and is free from any defects in workmanship, materials, or components. If you are purchasing a used vehicle, there may or may not be a manufacturer's warranty applicable to the vehicle. Dealer makes no warranty or representation regarding the vehicle's condition, history, or performance. USED CAR BUYERS PURCHASE WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON THE DEPARTMENTALLY MANUFACTURED VEHICLE. EXCLUDED ALL EXPRESS WARRANTIES, IMPLIED WARRANTIES OF MERCHANTABILITY, OR IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. THE USE OF THIS FORM IS NOT A WARRANTY OF ANY KIND, AND DOES NOT CONSTITUTE AN OFFER OF ANY FINANCIAL PRODUCT OR SERVICE. THE DEALER'S LIABILITY IS LIMITED TO THE SALE OF THE VEHICLE.

4. To the extent allowed by law, Customer shall not be entitled to recover from the Dealer any consequential damages, damages to property, damages from loss of use, loss of time, loss of profits or income, or any other incidental damages.

5. USED VEHICLE CASH: If you are purchasing a used vehicle, the Dealer is offering this form (a) for your use in the purchase of the used vehicle described herein, with the (b) cash price of the vehicle as shown on the window form for this vehicle. If you are purchasing a used vehicle, you will receive upon purchase a copy of the purchase order and a copy of the Dealer's Used Car Buyer's Guide. If you choose to do so, the Dealer will give you 100% of the money you paid, plus by you (b) the purchase price of the vehicle. You must return the vehicle to the Dealer within 10 days of the purchase of the vehicle. If you do not return the vehicle within 10 days, you will be responsible for the balance of the purchase price of the vehicle. The use of this form is not a warranty of any kind, and does not constitute an offer of any financial product or service. The Dealer's liability is limited to the sale of the vehicle.

6. You acknowledge that you have the opportunity to examine the vehicle and/or to take the vehicle to be examined by anyone of your choosing prior to executing this Customer's Purchase Order.

7. Used Car Buyers Guide: The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation: Este para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

000914



Control Number: 07786  
Date: 02/04/2016  
Request Number: AWD528

Time: 2:40 PM  
Requested By: MT

**VEHICLE INFORMATION**

Title Status: CURRENT TITLE

Title Number: 2060180943328-A	VIN: 1FMEU65E07UB13396
Duplicate Title: N	Make: FORD
Plate Number: AWD528	Model Year: 2007
Plate Expiration Date: 09/30/2015	Model Desc: EXPLORER
Decal Number:	Body Style: SU
Decal Exp Date: 09/30/2015	GVW: 0
Purchase Date:	Empty Weight: 4410
New Vehicle: NO	Odometer Status: A
Salvage %: 0	Odometer: 25
Suspense Info:	Title Brands:

*get new plate*

**OWNER INFORMATION**

Customer No:	Name	Relation Cd:
23002554	JAMES THOMAS DERRICK	
23002560	CATHERINE SAMS DERRICK	
	[REDACTED]	
	SC 29681-5954	

**LIENHOLDER INFORMATION**

Lien #1

Lien Date: 08/18/2007	FORD MOTOR CREDIT COMPANY
Satisfied:	PO BOX 105704
Cust #: 17865968	ATLANTA, GA 30348-5704

**INSURANCE INFORMATION**

Insurance Co. Code: 0  
Insurance Co. Name:

**MESSAGES**

9999W Vehicle has suspended indicator set;

*plate exp. 9/2015*

*2/4 left vm*

*get new plate*

000316

Report #5



PO BOX 105704  
ATLANTA GA 30348  
877-349-5260 X31453

June 28, 2016

RE JAMES DERRICK  
VIN# 1FMEU65E07UB13396  
2007 FORD EXPLR

To Whom It May Concern:

Ford Motor Credit Company has no security interest in the above-referenced vehicle and should not be identified as a lien holder. Please accept this statement as authorization to remove Ford Motor Credit Company as a lien holder on the title for this vehicle.

Sincerely,

Account Representative

Sworn to and subscribed before me  
this 28 day of JUN 2016

TAN  
Notary Public

County of HILLSBOROUGH

My Commission Expires: 07/28/2018



TYRONE WILSON  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF145919  
Expires 7/28/2018

Respondent Ed #6



# South Carolina Department of Motor Vehicles Application for Certificate of Title and Registration for Motor Vehicle or Manufactured Home/Mobile Home

Form 400  
(Rev. 4/10)

No other covers, insurances, or connections should be acceptable on this form. For more information, visit our website at www.scdmv.com or call our Customer Call Center at (803) 895-5000.

**SECTION A**  **EXPEDITE** (additional \$20.00 fee) Check here to expedite this title.

Check the box next to the type of transaction you need. Please include the required documents and fees with your completed and signed application. For expedited services (within 3 business days) include an additional \$20.00 fee. Make checks payable to: SC DMV. DO NOT SEND CASH.

<input checked="" type="checkbox"/> <b>NEW TITLE &amp; REGISTRATION</b> 1) Manufacturer Certificate of Origin (MCO) or Title 2) Paid Property Tax Receipt 3) \$15.00 title fee and 4) Regular registration fee 5) Sales Tax (5% of selling price or \$300.00 max.) 6) Insurance information	<input type="checkbox"/> <b>TITLE AND PLATE TRANSFER</b> 1) Manufacturer Certificate of Origin (MCO) or Title 2) "Out-Of-State" Tax Fee 3) Previous registration in another state 4) \$15.00 title 5) \$10.00 transfer fee 6) Sales Tax (5% of selling price or \$300.00 max.) 7) Insurance information	<input type="checkbox"/> <b>TITLE FOR MOBILE OR MANUFACTURED HOME</b> 1) Manufacturer Certificate of Origin (MCO) or Title 2) Consumer Protection Report required for \$300.00 sales tax cap, if mobile home is energy efficient. 3) \$15.00 title fee	<input type="checkbox"/> <b>TITLE ONLY</b> 1) Manufacturer Certificate of Origin (MCO) or Title 2) \$15.00 title fee 3) Sales Tax (5% of selling price or \$300.00 max.) <input checked="" type="checkbox"/> <b>TRANSFER TITLE</b> <input type="checkbox"/> Inland <input type="checkbox"/> Out-of-State <input type="checkbox"/> Out-of-State Fee 4) \$15.00 title fee	<input type="checkbox"/> <b>LEASED VEHICLE</b> 1) Do not complete Section D. Complete Section E and of other applicable sections.  MAIL YOUR APPLICATION TO: SC DMV P.O. Box 1489 • 10311 Wilson Blvd. Blythewood, SC 29018 • 0024
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**SECTION B - VEHICLE INFORMATION** Please print or type in black ink only.

VEHICLE IDENTIFICATION NUMBER 1FMFU16580TU1B13390	MAKE Ford	YEAR MAKE 2007	BODY STYLE SU	MODEL Explorer	EMPTY WEIGHT GVW
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**SECTION C - ODOMETER MILEAGE** (Miles not kilometers)

FEDERAL AND STATE LAW REQUIRE THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP FAILURE TO COMPLETE OR PROVIDE A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

I STATE THAT THE ODOMETER NOW READING IS 158701 (NO TENTHS) AND TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED ABOVE UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED:

DO NOT CHECK ONE OF THE FOLLOWING UNLESS IT APPLIES.

EXEMPT

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.

I CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE YIELDING ODOMETER DISCREPANCY.

**SECTION D - OWNER INFORMATION** Your complete legal name must be used on all title and registration documents.

TEMPORARY OWNER COMPLETE LEGAL NAME (LAST, FIRST, MIDDLE) Derrick James Thomas	SC CUSTOMER NO. OR DRIVER LICENSE NO., SOC. SEC. NO., OR FEIN	DATE OF BIRTH
NEW OWNER COMPLETE LEGAL NAME (LAST, FIRST, MIDDLE) Derrick Carl Phillips	SC DRIVER LICENSE NO., DRIVER LICENSE NO., SOC. SEC. NO., OR FEIN	DATE OF BIRTH
PRINCIPAL OWNER RESIDENCE (IF DIFFERENT FROM ABOVE) [REDACTED]	CITY [REDACTED]	STATE SC
MAILING ADDRESS (IF DIFFERENT FROM ABOVE)	CITY	STATE SC
ADDRESS WHERE VEHICLE IS HOUSED (IF DIFFERENT FROM ABOVE)	CITY	STATE SC
DAYTIME TELEPHONE NUMBER	TEMPORARY ADDRESS (IF APPLICABLE)	EXPIRATION OF TEMPORARY ADDRESS

**SECTION E - LEASING INFORMATION** Complete only for a leased vehicle.

LEASING COMPANY NAME	PHONE NO.	CONTACT PERSON	CUSTOMER NO.
ADDRESS	CITY	STATE	ZIP CODE
NAME OF LESSEE (PERSON LEASING VEHICLE)	DRIVER LICENSE NO., SOC. SEC. NO., OR FEIN	DATE OF BIRTH	
LESSEE'S RESIDENCE STREET ADDRESS (IF DIFFERENT FROM ABOVE)	CITY	STATE SC	ZIP CODE
LESSEE'S MAILING ADDRESS (IF DIFFERENT FROM ABOVE)	CITY	STATE	ZIP CODE
ADDRESS WHERE VEHICLE IS HOUSED (IF DIFFERENT FROM ABOVE)	CITY	STATE SC	ZIP CODE

**SECTION F - LIEN INFORMATION** If you are a lienholder, are you a SC ELT participant?  YES  NO

DRIVER LICENSE OR FEIN	LIENHOLDER NAME (FIRST LIEN) With How Many Other Liens?	DATE OF LIEN	CONTACT PERSON	TELEPHONE NUMBER
MAILING ADDRESS	CITY	STATE	ZIP CODE	
DRIVER LICENSE OR FEIN	LIENHOLDER NAME (SECOND LIEN)	DATE OF LIEN	CONTACT PERSON	TELEPHONE NUMBER
MAILING ADDRESS	CITY	STATE	ZIP CODE	

000310

< This section intentionally left blank >

**SECTION C SALES TAX EXEMPTION** Complete this section if you are entitled to a sales tax exemption and sign in the space provided verifying the exemption.  
 VEHICLE PURCHASED FROM INDIVIDUAL AND TITLED IN SOUTH CAROLINA. THE BUYER IS TO PLUS TAX ON LESS THAN 1% OF THE SALES PRICE OF THE VEHICLE. (IF YOU ARE BUYING A MOBILE HOME, SALES TAX IS CALCULATED DIFFERENTLY.)

THE VEHICLE WAS TRANSFERRED FROM:
  MY PARENT
  MY SPOUSE
  MY CHILD
  MY BROTHER/SISTER
  MY GRANDPARENT
  MY GRANDCHILD  
 THE VEHICLE WAS TRANSFERRED TO ME AS:
  LEGAL HEIR
  BENEFICIARY
  DISTRICTEE  
 I AM NOW A RESIDENT MILITARY PERSONNEL
  THE VEHICLE WAS A BONA FIDE GIFT

SIGNATURE \_\_\_\_\_

**SECTION D ADDITIONAL INFORMATION**

DATE OF PURCHASE \_\_\_\_\_ DATE FIRST OPERATED IN S.C. \_\_\_\_\_ ENERGY EFFICIENT MANUFACTURER VEHICLE?  YES  NO

VEHICLE IDENTIFICATION NUMBER \_\_\_\_\_ PRIOR TITLE STATE \_\_\_\_\_

THE VEHICLE DESCRIBED ON THIS APPLICATION IS:  RECREATIONAL  NON RECREATIONAL

THE VEHICLE SUSTAINED THE FOLLOWING DAMAGE:  COLLISION  FIRE  WATER  STOLEN (RECOVERED)  STOLEN (UNRECOVERED)

VEHICLE IDENTIFICATION NUMBER \_\_\_\_\_ Calculate the Salvage Percentage \_\_\_\_\_ Estimated Value \_\_\_\_\_  
 Salvage \_\_\_\_\_ Estimate for Repair \_\_\_\_\_  
 Percentage \_\_\_\_\_

**SECTION E SELLER INFORMATION** Applicant checks initial verifying the sales price of the vehicle.

NAME OF DEALER \_\_\_\_\_ DEALER/WHOLESALE NUMBER \_\_\_\_\_ SC SALES TAX NUMBER \_\_\_\_\_ SALES PRICE \_\_\_\_\_ GAIN/LOSS % \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

**SECTION F INSURANCE CERTIFICATION**

VEHICLE MUST BE INSURED WITH LIABILITY INSURANCE COVERAGE WHEN IT IS REGISTERED AND IT MUST REMAIN INSURED WHILE REGISTERED, WHETHER OR NOT IT IS OPERATED OR THE LICENSED MOTORIST MUST BE PAID. PENALTIES ARE SEVERE FOR VIOLATION OF THIS REQUIREMENT.

UNDER PENALTIES OF PERJURY, I/WE DECLARE THAT THIS VEHICLE IS INSURED BY A LIABILITY INSURANCE POLICY ISSUED THROUGH AN INSURANCE COMPANY LICENSED TO DO BUSINESS IN SOUTH CAROLINA AND IT WILL REMAIN INSURED THROUGHOUT THE REGISTRATION PERIOD.

NAME OF INSURANCE COMPANY \_\_\_\_\_

**SECTION G DONATE LIFE SCHEM**

YES, I WISH TO DONATE \$500.00 MORE OR LESS TO DONATE LIFE SCHEM AMOUNT OF DONATION \$ \_\_\_\_\_

**SECTION H SIGNATURE OF OWNER**

UNDER PENALTIES OF PERJURY, I/WE DECLARE THAT I/WE OWNED BY THIS VEHICLE AND SIGN FOR THIS SOUTH CAROLINA CERTIFICATE OF TITLE AND/OR REGISTRATION BECAUSE I/PURCHASED THIS VEHICLE FROM THE APPLICANT AND I/WE AGREE TO THE REGISTRATION OF THIS VEHICLE TO THE STATE OF SOUTH CAROLINA. I/WE ALSO AGREE TO THE REGISTRATION OF THIS VEHICLE TO THE STATE OF SOUTH CAROLINA. I/WE AGREE TO THE REGISTRATION OF THIS VEHICLE TO THE STATE OF SOUTH CAROLINA. I/WE AGREE TO THE REGISTRATION OF THIS VEHICLE TO THE STATE OF SOUTH CAROLINA.

*James Thomas Danner / Catherine Sano Danner* by *mta/llc* PDA 6/30/16

SIGNATURE OF OWNER (S) MUST BE SIGNED IN INK BY OWNER OR AUTHORIZED AGENT (ATTORNEY, POWER OF ATTORNEY IF APPLICABLE)

**DISCLOSURE STATEMENT**

AS PART OF THE CAROLINA CODE OF LAWS, THE DEPARTMENT SHALL OBTAIN THE FEDERAL EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER WHEN A VEHICLE IS REGISTERED WITH A GROSS VEHICLE WEIGHT OF MORE THAN 30,000 POUNDS OR A BUS OR TRUCK. UNDER THE DRIVER PRIVACY PROTECTION ACT OF 1994 (P.L. 103-197), YOU MAY OBJECT TO THE DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN OUR RECORDS.

**PENALTY FEES**

FAILURE TO REGISTER WITHIN 45 DAYS OF THE DATE OF PURCHASE OR THE DATE OF OPERATION IN SOUTH CAROLINA WILL RESULT IN PENALTY FEES IN ADDITION TO REGULAR TITLE AND/OR REGISTRATION FEES. THE LATE PENALTY FEE SCHEDULE IS AS FOLLOWS:

46 - 60 DAYS LATE - \$10.00	61 - 75 DAYS LATE - \$25.00	76 - 135 DAYS LATE - \$50.00	OVER 135 DAYS LATE - \$75.00
-----------------------------	-----------------------------	------------------------------	------------------------------

**THIS SECTION FOR DMV USE ONLY**

CHECK APPROPRIATE BOX:  BRAND  NO BRAND

DATE BY _____	TRANSACTION FEES
OFFICE/OFFICE NUMBER _____	EXPECTED FEE _____
PLATE NUMBER _____	LICENSE FEE _____
EXPIRATION DATE _____	TRANSFER _____
PLATE CLASS _____	TITLE _____
SUSPENSE REASON _____	USE OR RENEW FEE _____
	PENALTY _____
	DONATE LIFE SCHEM _____
	TOTAL _____

Response Sheet # 7

AUTHORIZATION TO RELEASE PAYOFF INFORMATION

Dealership Name Toyota of Greer Date \_\_\_\_\_

Contact Person Gregory Drummond Telephone [REDACTED]

Customer Name(s) Tara Kaye Hughes Shirley Kaye Hughes

Lienholder Information Carolina Title

Trade-In Vehicle Year: 2000 Make: Chrysler Model: 300M Vin: 2C3HE66G4YH198153

I acknowledge and agree that I have given the Dealership permission to contact you in order to obtain payoff information regarding the above-described trade-in vehicle. I understand the information about my account is private and that you may be asked to reveal nonpublic personal information about me to the Dealership, in accordance with the applicable Privacy Laws. I hereby authorize you to release my payoff information to the Dealership and answer any question that it has with respect to my account. I understand that this information will be used only for the purposes for which has been provided. Should the Dealership tender payment to payoff the remaining balance, I further authorize you to release the title to the trade-in vehicle to the Dealership.

[Signature]  
Customer

[Signature]  
Authorized Dealership Representative

Customer

For Dealership Use Only:

Lienholder Telephone: 804 [REDACTED] Fax: \_\_\_\_\_ Contact Person \_\_\_\_\_

Lienholder Address: [REDACTED] SC 29303

Payoff Amount: 600.00 876.27 Quoted To: per item 5.37 Good Until: 9/9/11 2/28

Account Number: 2C3HE66G4YH198153

Additional Notes: \_\_\_\_\_

\$ 1167.11

good thru 3/15

000320

Reposit Ch # 8

Amount: \$967.11 Sequence Number: 9392554325  
Account: [REDACTED] Capture Date: 03/08/2016  
Bank Number: 05390448 Check Number: 6568C

TO THE ORDER OF

**TOYOTA GREER**

35 FEB 2016

\*\*\*\*\*967.11

\*\*\*\*\*967.11

TOYOTA OF ORIGIN  
TWO SIGNATURES REQUIRED  
VOID AFTER 60 DAYS

*[Signature]*  
*[Signature]*

CAROLINA TITLE LOAN

⑆065680⑆ [REDACTED]

Electronic Endorsements						
Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
03/08/2016	000006245593261	122105278	Rtn Loc/BOFD	Y		WELLS FARCO BANK, NA
03/08/2016	009392554325	111012822	Pay Bank	N		BANK OF AMERICA, NA

**Owner Information**

Owner ID: XXXXXXXX8843  
MATTHEW DAVID GORMAN

Co-Owner ID:



Mail: [Redacted] SC 293750755

Veh:

Time:

**Plate Information**

Plate Number: CMC2057  
Plate Type/Use: PVA/PASS  
Plate Status: EXPIRED

Sticker Number:  
Expiration Date: 09/30/2016

**Vehicle Information**

VIN: JM1FE173560201810

Model Year: 2006

Make/Label/Mod/Style: MAZD//RX8/4S

Fuel: G

Weight/Shipping Wt: 46000

Odometer/Brand:

Odometer Reading: 065065

Last Inspection Date: 08/31/2015

Heavy Duty Indicator:

Brands:

Tax County: RUTHE

**Insurance Information**

Insurance Company: U22 - USAA GENERAL INDEMNITY C  
Policy: C [Redacted]

**Title Information**

Title Number: 772742131648022

Title Date: 06/25/2013

Operable/Inoperable: OPER

Dealer: OS

Title Status: CURRENT TITLE, NOT H

**Title Brands**

Title Brand:

Title Brand:

Title Brand:

**Lienholder Information**

Lienholder IDs: 000020698466  
JP MORGAN CHASE BANK NA  
PO BOX 901098  
FORT WORTH TX 761012098

Date: 06/13/2013

**Additional Information**

0000F Stops Exist - PAST DUE SAFETY/EMISSIONS INSPECTION  
0000F NO SERVICE PAST DUE SAFETY/EMISSIONS INSPECTION  
0000F (LAST SAFETY/EMISSIONS INSPECTION DATE: 2015-08-31)

000322

Chase Auto Finance  
PO Box 901076  
Ft Worth, TX 76101-2076

*Respondent List #10*  
*2 pages*



Toyota of Greer  
13770 E Wade Hampton Blvd  
Greer, SC 29651  
Michelle

April 12, 2017

Re: Matthew Gorman  
Vehicle: '06 MAZDA  
JM1FE173560201810

Dear Toyota of Greer:

I am writing to you regarding the above referenced vehicle.

Enclosed is the lien release for the above mentioned customer.

Should you need further assistance, please contact our Customer Service Department at 1-(800) 336-6675, Monday through Friday from 7:30 a.m. to 11 p.m., Saturday from 8 a.m. to 8 p.m. and Sunday from 8 a.m. to 8:30 p.m. Eastern Time.

Sincerely,

*Madison Blane*  
Title Research Representative  
DSR003

000323

Chase Auto Finance  
PO Box 901076  
Ft Worth, TX 76101-2076



April 12, 2017

LIEN SATISFIED

JPMorgan Chase Bank, N.A. acknowledges its lien against the following vehicle has been fully satisfied:

YEAR: '06 MAKE: MAZDA VIN: JM1FE1735602C1810

Chase customer name(s):  
Matthew Gorman

JPMorgan Chase Bank, N.A.

(Signed)

or Special

Authorized Representative of

Madison Hernandez

JPMorgan Chase Bank, N.A.

1-800-336-6675

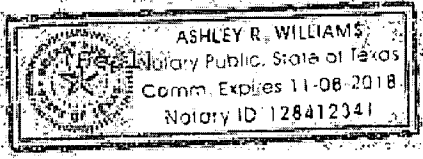
State of Texas

County of Tarrant County

This instrument was acknowledged before me on APR 12 2017 (date) by Madison Hernandez (print name of individual(s))

Signature of Notarial Officer

Notary



Title (e.g., Notary Public, County Clerk, Attorney)

My commission expires NOV 08 2018

DSR115

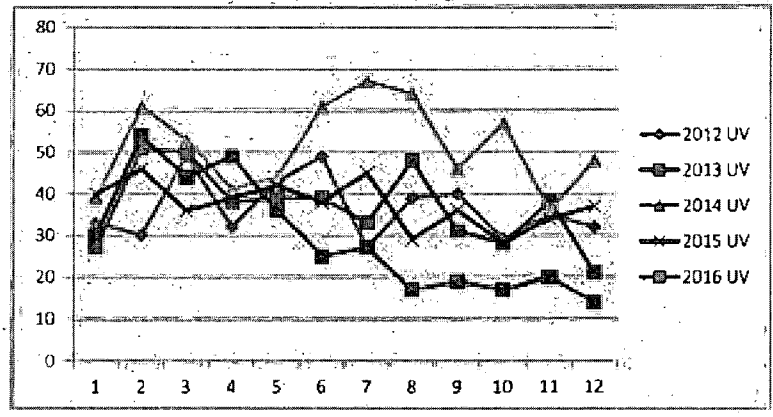
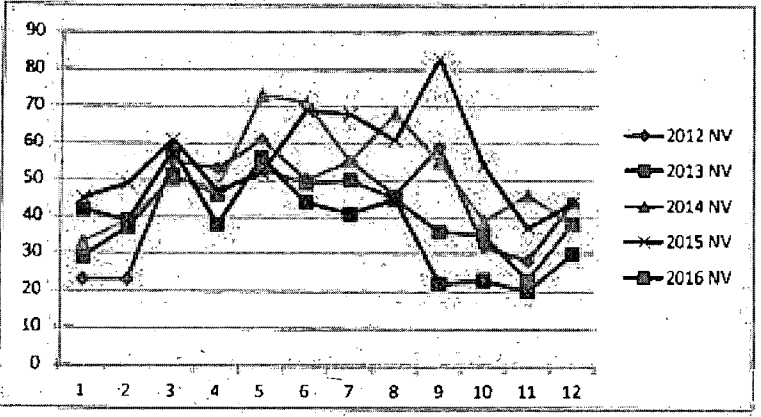
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# Respondents Exhibit # 11

EHH INC. dba HYUNDAI OF GREER

ANNUALIZED

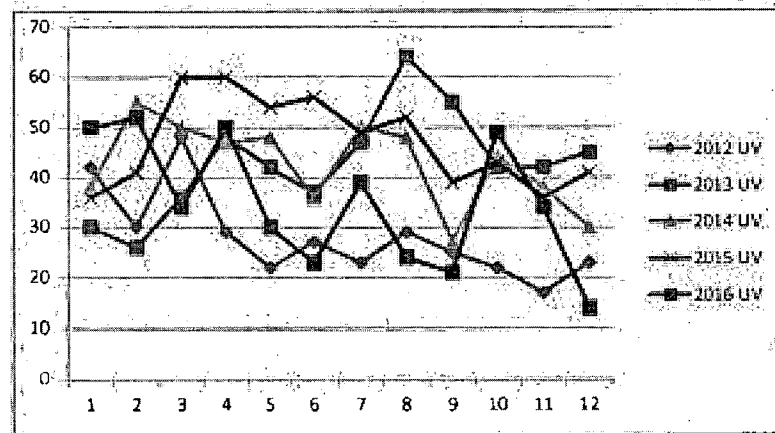
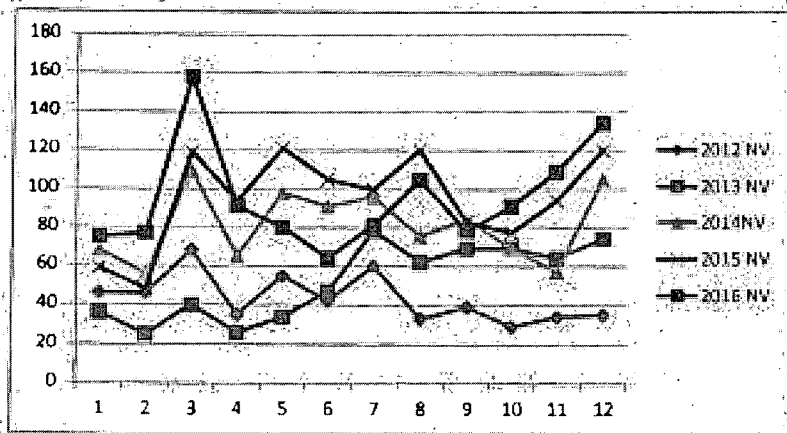
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	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	NEW/USED		
	2003																										0	0	
2004																											0	0	
2005																											0	0	
2006																											0	0	
2007																											0	0	
2008																											0	0	
2009			6	3	32	15	25	26	29	41	27	24	38	26	82	19	25	23	10	26	7	11	10	17	291	231	522		
2010	12	11	22	30	26	34	30	35	30	26	17	24	24	30	43	22	37	24	30	20	26	16	33	11	330	283	613		
2011	12	19	23	23	37	28	31	38	41	23	34	27	25	30	34	34	29	27	24	27	29	35	25	35	344	346	690		
2012	23	33	23	30	55	49	53	32	61	43	50	49	55	27	46	39	59	40	32	29	28	35	44	32	529	438	967		
2013	29	27	37	51	51	50	46	38	53	39	49	39	50	33	45	48	36	31	35	28	23	38	38	21	492	443	935		
2014	33	39	39	61	50	53	48	41	73	44	71	61	55	67	68	64	55	46	39	57	46	36	38	48	615	617	1232		
2015	45	40	49	46	61	36	47	39	52	42	69	38	68	45	61	29	83	36	54	28	37	34	44	37	670	450	1120		
2016	42	30	39	54	58	44	38	49	56	36	44	25	41	27	45	17	22	19	23	17	20	20	30	14	458	352	810		
2017	15	29	38	29	45	25	42	31	49	27	51	31	39	33	31	35									310	240	550		
																							TOTAL SALES (SALES HISTORY)		4039	3400	7439		



000025  
391

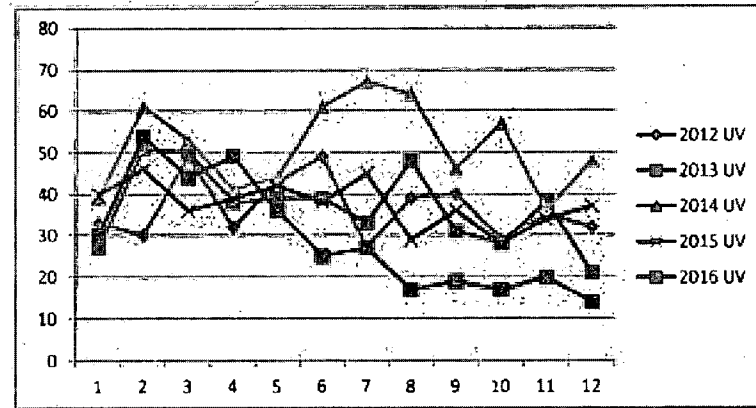
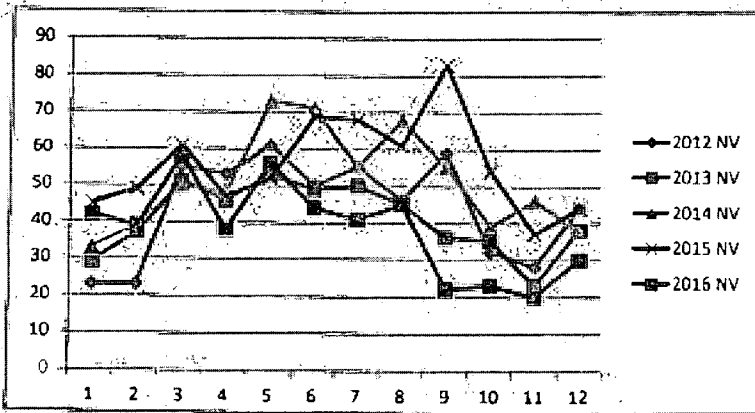
NOG, INC. D/B/A NISSAN OF GREER

	JANUARY		FEBRUARY		MARCH		APRIL		MAY		JUNE		JULY		AUGUST		SEPTEMBER		OCTOBER		NOVEMBER		DECEMBER		ANNUAL SALES				
	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U			
2003																										0	0	0	
2004																											0	0	0
2005																											0	0	0
2006																											0	0	0
2007																											0	0	0
2008																											0	0	0
2009																											0	0	0
2010																											0	0	0
2011													64	4	62	27	37	20	43	34	27	35	31	40	264	160	424		
2012	46	42	46	30	68	48	35	29	55	22	42	27	60	23	33	29	39	25	29	22	34	17	35	23	522	337	859		
2013	36	30	25	26	40	36	26	48	34	42	47	37	78	47	62	64	69	55	69	42	64	42	74	45	624	514	1138		
2014	68	38	56	55	109	50	65	47	98	48	91	36	96	50	75	48	84	27	69	44	57	38	105	30	973	511	1484		
2015	59	36	48	41	119	60	94	60	121	54	105	56	100	49	120	52	83	39	77	43	94	36	120	41	1140	567	1707		
2016	75	50	77	52	158	34	91	50	80	30	64	23	81	39	105	24	78	21	91	49	109	34	134	14	1143	420	1563		
2017	96	26	96	52	165	45	98	48	123	48	125	20	89	34	88	29									880	302	1182		
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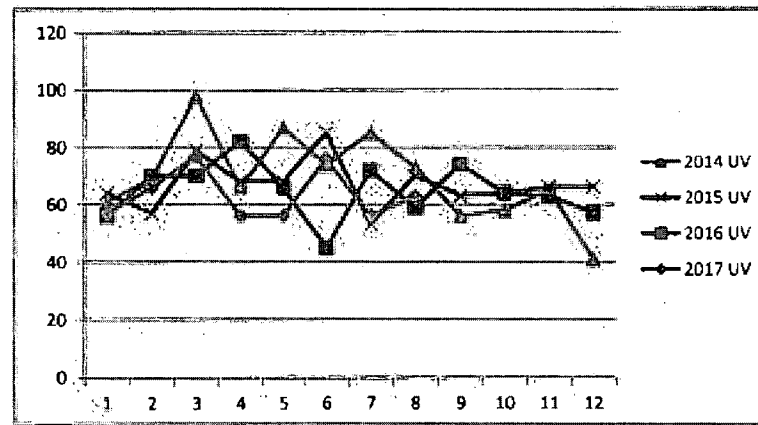
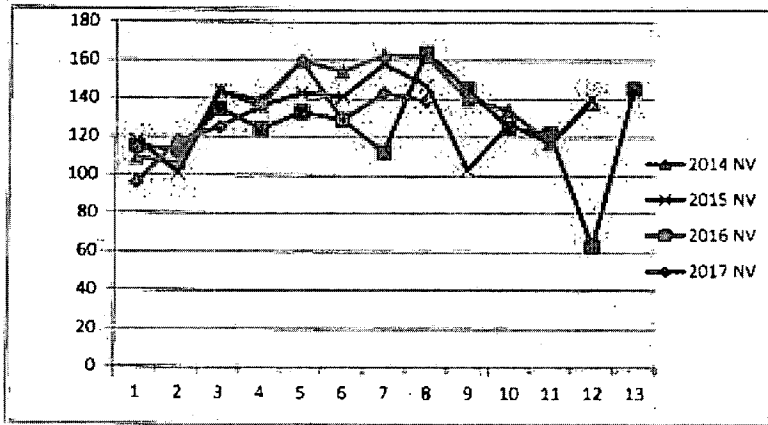
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	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	NEW/USED		
2003																										0	0		
2004																											0	0	
2005																											0	0	
2006																											0	0	
2007																											0	0	
2008																											0	0	
2009			6	3	32	15	25	26	29	41	27	24	38	26	82	19	25	23	10	26	7	11	10	17	291	231	522		
2010	12	11	22	30	26	34	30	35	30	26	17	24	24	30	43	22	37	24	30	20	26	16	33	11	330	283	613		
2011	12	19	23	23	37	28	31	38	41	23	34	27	25	30	34	34	29	27	24	27	29	35	25	35	344	346	690		
2012	23	33	23	30	55	49	53	32	61	43	50	49	55	27	46	39	59	40	32	29	28	35	44	32	529	438	967		
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2016	42	30	39	54	58	44	38	49	56	36	44	25	41	27	45	17	22	19	23	17	20	20	30	14	458	352	810		
2017	15	29	38	29	45	25	42	31	49	27	51	31	39	33	31	35									310	240	550		
																							TOTAL SALES (SALES HISTORY)		4039	3400	7439		



000237

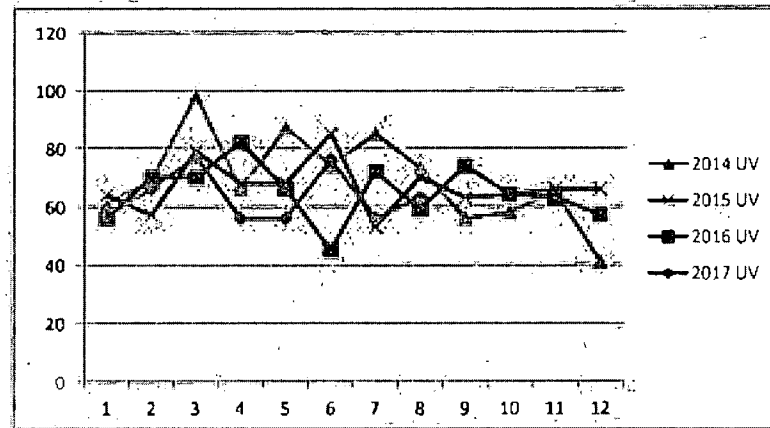
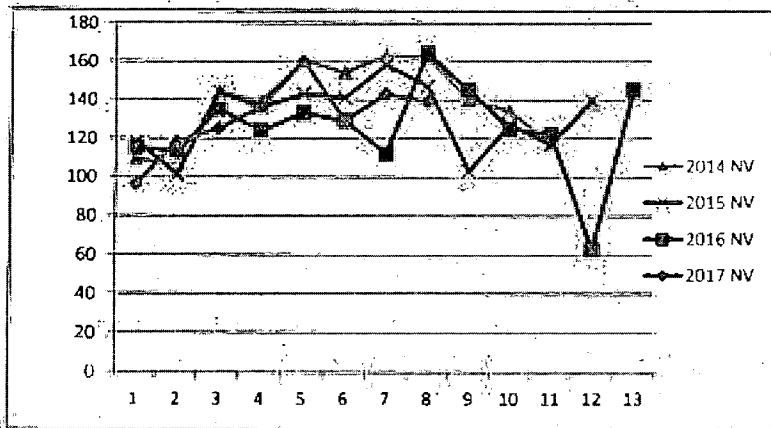
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	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	NEW/USED	
2003																												428
2004	79	35	74	54	91	42	75	41	117	89	89	81	121	104	103	100	98	68	69	59	56	54	58	56	1030	783	1813	
2005	55	50	40	54	86	74	91	77	72	71	66	71	69	57	98	86	65	108	77	94	86	98	98	95	903	935	1838	
2006	89	80	83	91	118	90	113	77	136	101	93	94	139	88	121	108	132	80	92	102	119	89	108	74	1343	1074	2417	
2007	114	80	90	76	99	87	105	63	137	102	124	85	119	86	118	88	97	73	86	44	90	57	79	54	1258	895	2153	
2008	52	66	63	78	76	76	72	106	98	100	56	61	92	79	76	84	61	59	40	42	80	46	99	54	865	851	1716	
2009	84	60	85	69	102	48	90	54	148	69	125	65	177	59	252	67	117	72	136	51	154	54	142	60	1612	728	2340	
2010	106	65	94	67	136	60	153	85	138	61	115	63	177	69	122	63	127	46	119	56	113	48	140	44	1540	727	2267	
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2013	83	66	103	101	123	100	117	73	132	101	116	77	124	75	169	109	144	69	112	90	114	54	137	60	1474	975	2449	
2014	109	61	106	69	144	93	139	66	160	87	154	74	163	85	162	73	140	56	134	58	117	65	138	41	1666	833	2499	
2015	118	64	101	57	144	79	136	68	143	68	141	85	158	53	147	70	103	63	127	64	117	66	140	66	1575	803	2378	
2016	115	56	113	70	135	70	124	82	133	66	129	45	112	72	164	59	145	74	125	64	122	63	145	57	1562	778	2340	
2017	96	57	118	66	125	77	136	56	160	56	129	76	143	56	139	63									1046	507	1553	

TOTAL SALES (SALES HISTORY) 18661 11726 30387



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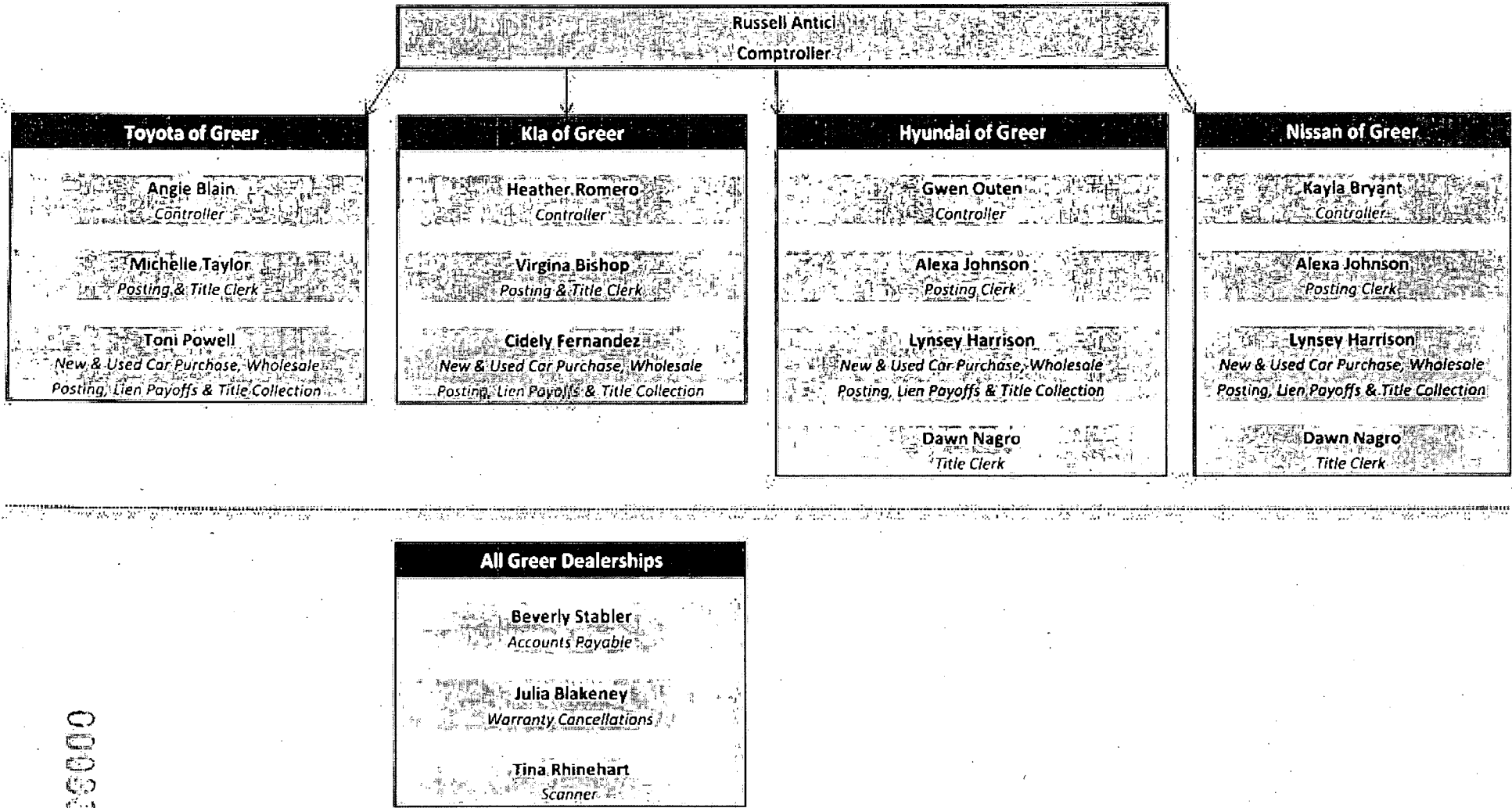
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	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	N	U	NEW/USED	
2003																			86	51	75	66	102	48	263	165	428	
2004	79	35	74	54	91	42	75	41	117	89	89	81	121	104	103	100	98	68	69	59	56	54	58	56	1030	783	1813	
2005	55	50	40	54	86	74	91	77	72	71	66	71	69	57	98	86	65	108	77	94	86	98	98	95	903	935	1838	
2006	89	80	83	91	118	90	113	77	136	101	93	94	139	88	121	108	132	80	92	102	119	89	108	74	1343	1074	2417	
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2009	84	60	85	69	102	48	90	54	148	69	125	65	177	59	252	67	117	72	136	51	154	54	142	60	1612	728	2340	
2010	106	65	94	67	136	60	153	85	138	61	115	63	177	69	122	63	127	46	119	56	113	48	140	44	1540	727	2267	
2011	108	67	117	75	116	59	112	59	93	65	80	65	101	68	105	103	72	63	100	53	81	68	127	40	1212	785	1997	
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2013	83	66	103	101	123	100	117	73	132	101	116	77	124	75	169	109	144	69	112	90	114	54	137	60	1474	975	2449	
2014	109	61	106	69	144	98	139	66	160	87	154	74	163	85	162	73	140	56	134	58	117	65	138	41	1666	833	2499	
2015	118	64	101	57	144	79	136	68	143	68	141	85	158	53	147	70	103	63	127	64	117	66	140	66	1575	803	2378	
2016	115	56	113	70	135	70	124	82	133	66	129	45	112	72	164	59	145	74	125	64	122	63	145	57	1562	778	2340	
2017	96	57	118	66	125	77	136	56	160	56	129	76	143	56	139	63									1046	507	1553	
																							TOTAL SALES (SALES HISTORY)		18661	11726	30387	



00000

Respondents Exhibit # 12

# Organizational Flow Chart



0005311

Petitioner Email #1



South Carolina Department of Motor Vehicles  
APPLICATION FOR A DEALER OR WHOLESALER LICENSE

DLA-1  
(Rev. 3/14)

NOTE: Form must be completed in its entirety. If space provided is insufficient, please reply on a separate sheet of paper and attach as part of the application. Submit original bond and power of attorney with application.

Check One:  Renewal  First Time Application  Change of Name, Address or Category  
(NOTE: All Changes must include a rider from your surety company indicating change being made.)

Wholesale Only  Travel Trailer Only  Motorcycle Only  Dealer (Retail/Wholesale)  Wholesale Auction

I (we) hereby apply for license to engage in the PRINCIPAL BUSINESS of selling or dealing in motor vehicles within the State of South Carolina.

Name of Dealership  
MCE Automotive Inc. Has Toyota of Greer

Street Address for Dealership  
13770 E. Wade Hampton Blvd

City Greer State SC Zip Code 29651 County Spriburg

Telephone Number  
(864) 662-4800

Special Mailing Address and E-Mail Address  
jr@mceautomotive.com

Check Only One:  Franchised  Non-Franchised  
If franchised, list Make(s) of Vehicles

1. Toyota

2.

3.

DEPARTMENT USE ONLY

License Year \_\_\_\_\_ Date of Issue \_\_\_\_\_

Specialist's Code \_\_\_\_\_

Fee Schedule  
 \_\_\_\_\_ Dealer/Wholesaler License Fee \$50.00  
 \_\_\_\_\_ Demonstration Plate @ \$20.00 per plate  
 \_\_\_\_\_ Total Dealer License Number \_\_\_\_\_

Demonstration Plates Assigned:  
 No. \_\_\_\_\_ No. \_\_\_\_\_  
 No. \_\_\_\_\_ No. \_\_\_\_\_  
 No. \_\_\_\_\_ No. \_\_\_\_\_

Check One Statement:  
 \_\_\_\_\_ Information below same as on computer file.  
 \_\_\_\_\_ Changes made to information below.

Yes  No 1. Do you have a surety bond in effect? Name and address of surety company \_\_\_\_\_  
TRAVELERS CASUALTY & SURETY BOND CO.  
 Surety Bond Number 103981514 Effective Date June 15, 15 to June 15, 16  
 Name of principal MARK ESCUDE  
 Name of liability insurance company FEDERAL INSURANCE CO.  
 Policy Number 799 Effective Dates 5-1-15 to 5-1-16  
 Name of Policyholder MCE Automotive, Inc  
 Name of agent/agency BBT - BANKS, Inc Phone Number 864-442-4030

Yes  No 2. Was the Business a licensed dealer/wholesaler during previous year?  
 If yes, list license number 30643  
 Indicate number of demonstration plates assigned 30  
 Average number of employees during previous year 75  
 Number of motor vehicles PURCHASED during the previous year 3500  
 Number of motor vehicles SOLD during the previous year 2194  
 Number of travel trailers PURCHASED during the previous year 0  
 Number of travel trailers SOLD during the previous year 0  
 Number of motorcycles PURCHASED during the previous year 0  
 Number of motorcycles SOLD during the previous year 0

3. Are there any records for each vehicle transaction indicated in question two (2) which reflect the following:  
 Yes  No A. Dates of purchase and sale  
 Yes  No B. Vehicle Identification Number  
 Yes  No C. Name and address of seller, purchaser, and copy of odometer statement from seller to dealer/wholesaler and from dealer/wholesaler to purchaser. If no, explain on a separate sheet of paper.

For First Time Dealers or Dealers licensed less than one calendar year:

I hereby estimate that I will sell approximately \_\_\_\_\_ motor vehicles during the upcoming year. I understand that the number of license plates may be increased or decreased according to actual sales.

000031



**South Carolina Department of Motor Vehicles**  
**APPLICATION FOR A DEALER OR WHOLESALER LICENSE**

DLA-1  
(Rev. 3/14)

- Yes  No
  - Yes  No
  - Yes  No
  - Yes  No
  - Yes  No
  - Yes  No
  - Yes  No
  - Yes  No
  - Yes  No
  - Yes  No
4. Sales Tax number assigned by S.C. Department of Revenue 099-31147-1  
Have monthly sales tax reports been filed with the S.C. Department of Revenue?
  5. Do you sell motor vehicles on credit?  
If yes, have you filed any credit notifications or maximum rate documents with the Department of Consumer Affairs?
  6. Do you have a Dealer's Manual? (DMV Specialist's Code: \_\_\_\_\_)
  7. Is your business financially backed by another person or business? If yes, give details \_\_\_\_\_
  8. A. Are you a subsidiary company?  
B. Does your business financially back any other dealer or wholesaler? If yes, list name and address of business \_\_\_\_\_
  9. Has the applicant, owner, sales personnel or agent been licensed as a motor vehicle dealer? If yes, answer the following on a separate sheet of paper: name of business, address, and the dates the business was in operation. Also indicate whether any claims or charges of fraudulent or deceptive trade practices or odometer rollbacks were brought against these individuals or entities. RIA of Greer 14435 E. Wade Hampton Greer, SC 29651
  10. Has the owner, applicant, sales personnel or agent ever been convicted of any offense involving any motor title or registration, auto theft, or odometer rollbacks? If yes, give details, name and address of court, date of convictions, offense convicted of and punishment imposed on a separate sheet of paper.
  11. Has the owner, applicant, sales personnel or agent allowed the use of demonstration plates to operate wrecker in use by the business or to operate vehicle owned by the business that are leased or rented by the public? If yes, give details on a separate sheet of paper.
  12. Has the license or demonstration plates of your business or any employee of your business ever been suspended or revoked or subject to suspension revocation? If yes, give details on a separate sheet of paper.
  13. List complete name (do not use initials), address and driver's license number of the actual owner of the business. (Any person who has at least 10% ownership in the business):  
Please See attached Spreadsheet
  14. List name, address and driver's license number of principal sales manager of your business:  
Please See attached Spreadsheet
  15. List name, address and driver's license number of employees/agents of your business:  
Please see attached Spreadsheet

Under penalties of perjury, I declare that I am the owner, partner or corporate officer of the business named on this application and that all of the information is true and correct. I further understand that false responses to these questions may result in denial, suspension or revocation of the motor vehicle license being sought and may subject me to prosecution for perjury and other criminal offenses. I have freely and knowingly executed the formalities of an oath in this affirmation and I hereby certify that I am authorized to apply for the license and to supply the information on behalf of the applicant.

[Signature]  
 Signature of Owner or Corporate Officer  
Russell Antice  
 Print full name of person signing above

Mail to: South Carolina Department of Motor Vehicles  
 Dealer Licensing & Audit Unit  
 P. O. Box 1498  
 Blythewood, South Carolina 29016-0023

Visit our website at [www.scdmvoonline.com](http://www.scdmvoonline.com) or call (803) 896-2611

000332



# South Carolina Department of Motor Vehicles

## APPLICATION FOR A DEALER OR WHOLESALER LICENSE

DLA-1  
(Rev. 3/14)

**NOTE: Form must be completed in its entirety. If space provided is insufficient, please reply on a separate sheet of paper and attach as part of the application. Submit original bond and power of attorney with application.**

Check One:  Renewal  First Time Application  Change of Name, Address or Category  
(NOTE: All Changes must include a rider from your surety company indicating change being made.)

Wholesale Only  Travel Trailer Only  Motorcycle Only  Dealer (Retail/Wholesale)  Wholesale Auction

I (we) hereby apply for license to engage in the **PRINCIPAL BUSINESS** of selling or dealing in motor vehicles within the State of South Carolina.

Name of Dealership <u>MCE Automotive Inc - Jb Toyota of Greer</u>				<b>DEPARTMENT USE ONLY</b>			
Street Address for Dealership <u>13770 E. WADE HANCOCK BLVD</u>				License Year <u>2017</u> Date of Issue <u>9/23/16</u>		Specialist's Code <u>49</u>	
City <u>GREER</u>	State <u>SC</u>	Zip Code <u>29615</u>	County <u>SPRING</u>	<b>Fee Schedule</b>			
Telephone Number <u>(864) 866-4800</u>				<input checked="" type="checkbox"/> Dealer/Wholesaler License Fee \$50.00			
Special Mailing Address and E-Mail Address: <u>LANTIER@MCEAUTOMOTIVE.COM</u>				<input checked="" type="checkbox"/> Demonstration Plate @ \$20.00 per plate			
Check Only One: <input checked="" type="checkbox"/> Franchised <input type="checkbox"/> Non-Franchised				Total Dealer License Number <u>30643</u>			
If franchised, list Make(s) of Vehicles				<b>Demonstration Plates Assigned:</b>			
1. <u>TOYOTA</u>				No. _____ No. _____			
2. _____				No. _____ No. _____			
3. _____				No. _____ No. _____			
				<b>Check One Statement:</b>			
				<input type="checkbox"/> Information below same as on computer file.			
				<input type="checkbox"/> Changes made to information below.			

Yes  No 1. Do you have a surety bond in effect? Name and address of surety company TRAVELERS CASUALTY & SURETY BOND  
 Surety Bond Number 103901514 Effective Date 6-15-16 to 6-15-17  
 Name of principal MARK ESCUDE  
 Name of liability insurance company FEDERAL INSURANCE COMPANY  
 Policy Number [REDACTED] Effective Dates 5-1-16 to 5-1-17  
 Name of Policyholder MCE AUTOMOTIVE INC  
 Name of agent/agency BRET-BARNES INS Phone Number 864-855-0970

Yes  No 2. Was the Business a licensed dealer/wholesaler during previous year?  
 If yes, list license number 30643  
 Indicate number of demonstration plates assigned 30  
 Average number of employees during previous year 70  
 Number of motor vehicles PURCHASED during the previous year 3000  
 Number of motor vehicles SOLD during the previous year 2378  
 Number of travel trailers PURCHASED during the previous year 0  
 Number of travel trailers SOLD during the previous year 0  
 Number of motorcycles PURCHASED during the previous year 0  
 Number of motorcycles SOLD during the previous year 0

**For First Time Dealers or Dealers licensed less than one calendar year:**

I hereby estimate that I will sell approximately \_\_\_\_\_ motor vehicles during the upcoming year. I understand that the number of license plates may be increased or decreased according to actual sales.

Yes  No 3. Are there any records for each vehicle transaction indicated in question two (2) which reflect the following:

A. Dates of purchase and sale  
 B. Vehicle Identification Number  
 C. Name and address of seller, purchaser, and copy of odometer statement from seller to dealer/wholesaler and from dealer/wholesaler to purchaser. If no, explain on a separate sheet of paper.

Yes  No  
 Yes  No  
 Yes  No

\_\_\_\_\_  
 Inspector General



**South Carolina Department of Motor Vehicles**  
**APPLICATION FOR A DEALER OR WHOLESALER LICENSE**

DLA-1  
(Rev 3/14)

Yes  No

4. Sales Tax number assigned by S.C. Department of Revenue 099-31147-1  
 Have monthly sales tax reports been filed with the S.C. Department of Revenue?

Yes  No  
 Yes  No

5. Do you sell motor vehicles on credit?  
 If yes, have you filed any credit notifications or maximum rate documents with the Department of Consumer Affairs?

Yes  No  
 Yes  No

6. Do you have a Dealer's Manual? (DMV Specialist's Code \_\_\_\_\_)

7. Is your business financially backed by another person or business? If yes, give details

Yes  No  
 Yes  No

8. A. Are you a subsidiary company?  
 B. Does your business financially back any other dealer or wholesaler? If yes, list name and address of business.

Yes  No

9. Has the applicant, owner, sales personnel or agent been licensed as a motor vehicle dealer? If yes, answer the following on a separate sheet of paper: name of business, address, and the dates the business was in operation. Also indicate whether any claims or charges of fraudulent or deceptive trade practices or odometer rollbacks were brought against these individuals or entities. NO CLAIMS - PLEASE SEE ATTACHED

Yes  No

10. Has the owner, applicant, sales personnel or agent ever been convicted of any offense involving any motor title or registration, auto theft, or odometer rollbacks? If yes, give details, name and address of court, date of convictions, offense convicted of and punishment imposed on a separate sheet of paper.

Yes  No

11. Has the owner, applicant, sales personnel or agent allowed the use of demonstration plates to operate wrecker in use by the business or to operate vehicle owned by the business that are leased or rented by the public? If yes, give details on a separate sheet of paper.

Yes  No

12. Has the license or demonstration plates of your business or any employee of your business ever been suspended or revoked or subject to suspension revocation? If yes, give details on a separate sheet of paper.

13. List complete name (do not use initials), address and driver's license number of the actual owner of the business. (Any person who has at least 10% ownership in the business):

PLEASE SEE ATTACHED

14. List name, address and driver's license number of principal sales manager of your business:

Robert Hagan - Please see attached

15. List name, address and driver's license number of employees/agents of your business:

Jim Hutchinson - Please see attached

Under penalties of perjury, I declare that I am the owner, partner or corporate officer of the business named on this application and that all of the information is true and correct. I further understand that false responses to these questions may result in denial, suspension or revocation of the motor vehicle license being sought and may subject me to prosecution for perjury and other criminal offenses. I have freely and knowingly executed the formalities of an oath in this affirmation and I hereby certify that I am authorized to apply for the license and to supply the information on behalf of the applicant.

[Signature]  
 Signature of Owner or Corporate Officer  
Russell Antici  
 Print full name of person signing above

Mail to: South Carolina Department of Motor Vehicles  
 Dealer Licensing & Audit Unit  
 P. O. Box 1498  
 Blythewood, South Carolina 29016-0023

Visit our website at [www.scdmvonline.com](http://www.scdmvonline.com) or call (803) 896-2611

DLA-1  
 0000334

D.B.A. NAME	KIA OF GREER	TOYOTA OF GREER	NISSAN OF GREER
TAX FED ID#	42-1562350	46-0483367	45-2041045
STATE TAX ID#	42-47890-6	099-31147-1	042-55508-3
DMV LICENSE #	████████	████████	████████
DEALER CODES	SC020	39051	5312
PHONE	(864)879-3800	(864)662-4800	(864)877-7678
FAX	(864)652-4851	(864)662-4851	(864)662-4851
BUSINESS LEGAL NAME	MCE CARS INC.	MCE AUTOMOTIVE INC.	NOG, INC
ADDRESS	14345 E WADE HAMPTON	13770 E. WADE HAMPTON	14125 E. WADE HAMPTON BLVD
CITY, STATE, ZIP	GREER, SC 29651	GREER, SC 29651	GREER, SC 29651
MONTH / YEAR STARTED	FEB, 2003	OCT, 2003	JUN. 2011

Copy of the original document  
with the signature of the principal of  
the business.

*[Signature]*

OWNER INFORMATION

TITLE	PRESIDENT	VICE - PRESIDENT	SECRETARY
NAME	MARK ESCUDE	ROBERT HOGAN	JIM HUTCHINSON
ADDRESS	[REDACTED]	[REDACTED]	[REDACTED]
DL#	[REDACTED]	[REDACTED]	[REDACTED]
DOB	[REDACTED]	[REDACTED]	[REDACTED]
SS#	[REDACTED]	[REDACTED]	[REDACTED]

STATE OF CALIFORNIA  
DEPARTMENT OF REVENUE  
SANTA ANA DISTRICT OFFICE  
SANTA ANA, CALIFORNIA  
[Signature]

67MCEAUT



South Carolina Department of Public Safety  
MOTOR VEHICLE DEALER AND WHOLESALER SURETY BOND

DLA-1B  
(Rev. 4/96)

Dealer Number

Please read instructions on reverse side before executing bond.

BOND NUMBER 103981514 EFFECTIVE DATE June 15, 2003 TIME                       A.M. / P.M.

KNOW ALL MEN BY THESE PRESENTS: that we MCE Automotive, Inc. dba Toyota of Greer, SC  
(Firm Name as Licensed)

Doing business at 955 East Wade Hampton Blvd., Greer, SC 29651

as Principal and Travelers Casualty and Surety Company of America as Surety

are duly authorized to do business within the State of South Carolina, as Surety, are held and firmly bound unto the people of the State of South Carolina to indemnify any owner of a motor vehicle, or his legal representative, who may be aggrieved by any fraud, fraudulent representation or violation by said Principal, salesman, or representatives acting for such Principal within the scope of employment of such salesman or representatives, of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, to the amount of Fifteen Thousand Dollars (\$15,000), lawful money of the United States of America, for which payment, well and truly to be made, we bind ourselves jointly and severally, our joint and several heirs, executors, administrators, successors, and assigns, firmly by these presents; provided that the aggregate liability of the surety under this bond for any and all claims is limited to Fifteen Thousand Dollars (\$15,000) or to the amount of the actual loss incurred, whichever is less.

WHEREAS, the above bounden Principal desires that a motor vehicle dealer's or wholesaler's license be issued and thereafter renewed from time to time by South Carolina Department of Public Safety;

WHEREAS, this bond executed by the said Principal and Surety is filed with the South Carolina Department of Public Safety in compliance with S.C. Code Ann., 56-13-320, to enable said Principal to obtain a license from the Department under the provisions of that law.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall well and truly observe and strictly and faithfully comply with the aforesaid requirements of law and shall save and keep harmless any owner of a motor vehicle or his legal representative made to him by such Principal, such Principal's salesman or representatives acting for the Principal or within the scope of the employment of such salesman or representatives, or from any loss or damage suffered by reason of the violation such Principal or any such salesman or representatives of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, then this obligation shall be null and void; otherwise it shall remain in full force and effect. It is understood that the injured party need not obtain a judgment against the Principal before making claim against the Surety on this bond.

This bond shall not automatically expire with the license for which it is initially issued, but shall continue indefinitely, from license year to license year, upon timely payment of the premium thereon. Before this bond may be cancelled, a thirty (30) day written notice must be given to the Department of Public Safety. Such cancellation does not affect any liability incurred or accrued prior to cancellation.

MCE Automotive, Inc. dba Toyota of Greer, SC  
(Principal)

Travelers Casualty and Surety Company of America  
(Surety)

By \_\_\_\_\_  
(Title)

By: Catherine C. Fountain  
Catherine C. Fountain (Title) Attorney-In-Fact

6-13

000037  
403

RIDER

Travelers Casualty and Surety Company of America  
One Tower Square 3PB, Hartford, CT 06183

To be attached to and form a part of:

Bond No. 103881514

Type of Bond: Motor Vehicle Dealer and Wholesaler Surety Bond

Executed by MCE Automotive, Inc. dba Toyota of Greer, SC, as Principal, and by Travelers Casualty and Surety Company of America, as Surety, in favor of State of South Carolina and dated March 10, 2004.

In consideration of the premium charged for the attached bond, it is hereby agreed to change:

The principal's name

From:  
MCE Automotive, Inc. dba Toyota of Greer, SC

To:  
MCE Automotive, Inc. dba Toyota of Greer / dba Scion of Greer

This rider is effective March 10, 2004.

This rider is executed upon the express condition that the surety's liability under said bond shall not be cumulative and shall in no event exceed the amount specifically set forth in said bond or any existing certificate changing the amount of said bond. The referenced bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

SIGNED, SEALED AND DATED this 10th day of March, 2004.

MCE Automotive, Inc. dba Toyota of Greer / dba Scion of Greer

By: \_\_\_\_\_  
Principal

Travelers Casualty and Surety Company of America

By: Catherine C. Fountain  
Catherine C. Fountain, Attorney-in-Fact

\*RIDER ACCEPTED BY:

\_\_\_\_\_  
(Obligee)

Date

\*If Obligee signature required, please sign duplicate and return to Surety.



3-1234 (01-00)

000388



MCE Auto



COPY

License No. \_\_\_\_\_

RIDER

To be attached to and form part of Bond No. 103981514

Issued on behalf of MCE Automotive, Inc. dba Toyota of Greer / dba Selon of Greer as Principal, and in favor of STATE OF SOUTH CAROLINA as Oblige.

It is agreed that:

1. The Surety hereby gives its consent to change the Name:

from: MCE Automotive, Inc. dba Toyota of Greer / dba Selon of Greer  
to: MCE Automotive, Inc. dba Toyota of Greer

2. The Surety hereby gives its consent to change the Address

from:  
to:

3. The Surety hereby gives its consent to change the AMOUNT OF BOND

from: \$15,000.00  
to: \$30,000.00

4. This rider shall become effective as of September 15, 2006.

PROVIDED, however, that the liability of the Surety under the attached bond as changed by this Rider shall be cumulative.

Signed, sealed and dated January 30, 2007.

Travelers Casualty and Surety Company of America

By: Norma McMahon  
Norma McMahon  
Attorney-in-Fact

Accepted: STATE OF SOUTH CAROLINA  
Obligee

or MCE Automotive, Inc. dba Toyota of Greer  
Principal

By: \_\_\_\_\_

By: \_\_\_\_\_

S-4111.666

Contract No. 103981514  
MCE Automotive, Inc. dba Toyota of Greer  
1/30/07

000320



COPY

License No. \_\_\_\_\_

RIDER

To be attached to and form part of Bond No. 103981514.

Issued on behalf of MCE Automotive, Inc. d/b/a Toyota of Greer, SC as Principal, and in favor of South Carolina Dept. of Motor Vehicles, Dealer Licensing Unit as Obligee.

It is agreed that:

1. The Surety hereby gives its consent to change the Name:

from:  
to:

2. The Surety hereby gives its consent to change the Address

from: 955 E. Wade Hampton Road  
to: 13770 E. Wade Hampton Road  
(as a result of new 911 numbering system)

3. The Surety hereby gives its consent to change the \_\_\_\_\_

from:  
to:

4. This rider shall become effective as of August 16, 2007:

PROVIDED, however, that the liability of the Surety under the attached bond as changed by this Rider shall not be cumulative.

Signed, sealed and dated August 16, 2007.

Travelers Casualty and Surety Company of  
America

By: Norma McMahon  
Norma McMahon  
Attorney-in-Fact

Accepted: SC Dept. of Motor Vehicles  
Obligee

or MCE Automotive, Inc. d/b/a Toyota of Greer, SC  
Principal

By: \_\_\_\_\_

By: \_\_\_\_\_

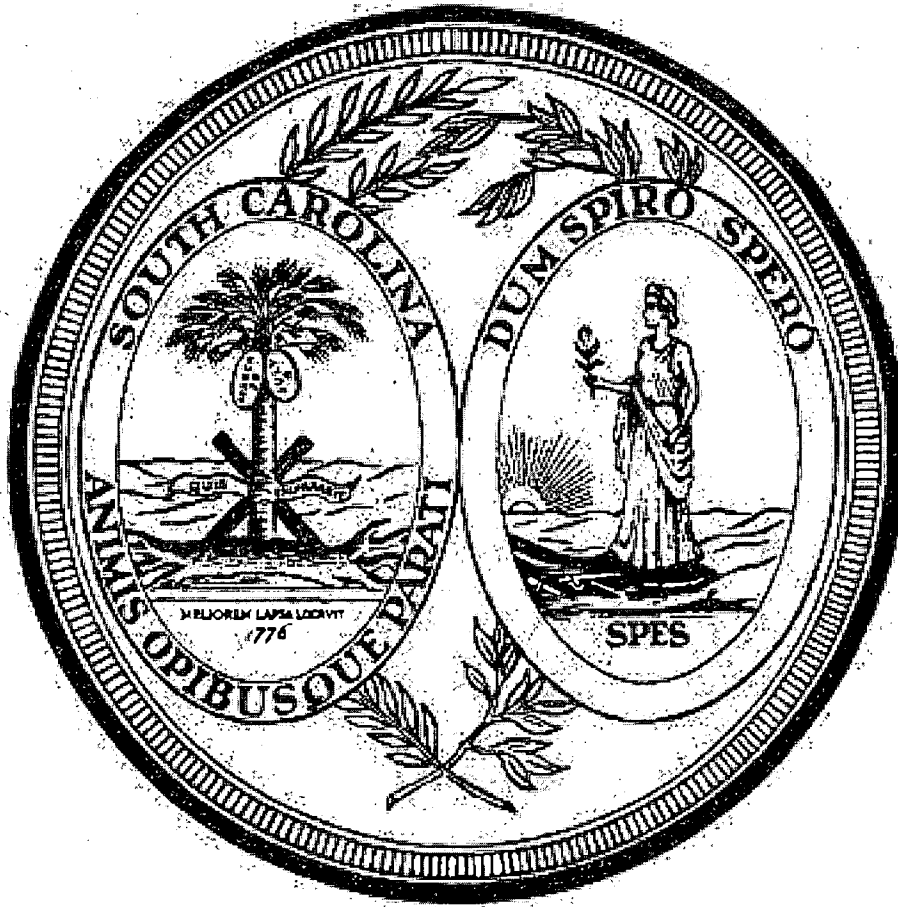
S-1111266

On this day of \_\_\_\_\_ 2007, I, \_\_\_\_\_  
attorney-in-fact of the above-named Principal,  
do hereby certify that the above is a true and correct  
copy of the original as filed with the Department of  
Motor Vehicles, Dealer Licensing Unit.

Norma McMahon  
Attorney-in-Fact

000341

# South Carolina Department of Motor Vehicles



## Dealer and Wholesaler Manual 2007

000812

## PURPOSE AND SCOPE

The South Carolina Department of Motor Vehicles (DMV) has developed a Dealer and Wholesaler Manual to provide new and existing dealers with up-to-date information. This manual lists requirements mandated by state and federal law, and DMV's policy. It is also designed to instruct dealers on how to complete certain types of documents and about the proper maintenance of dealer records.

Dealers should review the Dealer Manual and familiarize themselves with its contents. The sections of the Dealer Manual are arranged by topic, with a table of contents and with instruction sheets for certain documents. The information in this Dealer Manual is not protected by copyright, and may be reproduced in part or in whole, as needed.

Changes in law or policy may require periodic updates to the Dealer Manual. The manual will be placed on DMV's website. Sections of the law appearing in this manual may be paraphrased for simplicity or to reflect DMV's interpretation. Customers wishing to research specific sections of the law may do so by visiting our website at: [www.scdmvonline.com](http://www.scdmvonline.com)

If you have comments or suggestions related to this manual, please contact us at the below address or via phone at (803) 896-2611:

South Carolina Department of Motor Vehicles  
Dealer License & Audit Unit  
P. O. Box 1498  
Blythewood, SC 29016-0023

### DISCLAIMER:

**The state motor vehicle laws are not reproduced in their entirety and the wording is not identical. Due to possible legislative changes in federal and state law and SCDMV policy, the information in this manual may not always be current. SCDMV will make every effort to incorporate any changes as soon as possible. If a conflict appears between the language of this manual and the language of South Carolina law, the law will prevail.**

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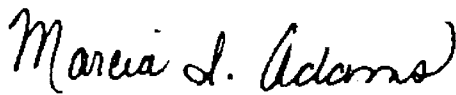
000345

## **A Message from the Executive Director**

As a South Carolina dealer or wholesaler, the services you provide your customers are an important part of the state's economy. This manual is designed to assist you in the operation of your business and give you a better understanding of the procedures required by law.

We know that the buying, selling, titling and registration of motor vehicles can be a complicated process and SCDMV employees are available to assist you. It is important to maintain accurate records and ensure that each and every transaction is documented correctly.

Please review this manual and contact our Dealer Licensing and Audit Unit if you have any questions. As laws change, this publication will be supplemented to keep you informed.



Marcia S. Adams, Executive Director  
S.C. Department of Motor Vehicles

000346

# SECTION I

## DEALER LICENSES

000347

# TYPES OF DEALER LICENSES

The Department of Motor Vehicles (DMV) issues several types of licenses for buying, selling and trading motor vehicles. The type of business you wish to operate should determine the type of license appropriate for you. Each license is valid for 12 months and must be displayed prominently in your place of business. Each license applies to only one dealer at one business location and is not transferable to any other dealer or location. The fee for each license is \$50. If you operate as a dealer or wholesaler without the proper license, you may be convicted of a misdemeanor and fined up to \$10,000 and/or imprisoned for up to two (2) years.

## MOTOR VEHICLE DEALER LICENSE

A motor vehicle retail dealer license, the most commonly issued license, will allow you to sell retail or wholesale motor vehicles in your inventory. Vehicles may be sold to the general public and any other dealer or wholesaler.

As a licensed dealer, you are not required to sell a specific number of vehicles to maintain your license. However, you must have a dealer license if you do the following:

- sell or attempt to sell more than five (5) vehicles in a calendar year.

## MOTOR VEHICLE WHOLESALER LICENSE

Licensed motor vehicle wholesalers differ from dealers in that the law restricts to whom they can sell motor vehicles. As a licensed wholesaler, you may only sell vehicles in your inventory to licensed motor vehicle dealers or other licensed wholesalers. There are no limitations on or requirements for the number of vehicles you sell in a calendar year. In addition, as a licensed wholesaler, you are not required to sell a specific number of vehicles to maintain your license. However, you must have a wholesaler license if you do the following:

- sell or attempt to sell more than five (5) vehicles in a calendar year.

## MOTOR VEHICLE WHOLESALE AUCTION LICENSE

A motor vehicle wholesale auction license allows you to conduct a motor vehicle auction in your place of business. You do not own the vehicles auctioned. Other businesses actually own, buy or sell the vehicles. Your wholesale auction license permits you to provide a building or place to conduct the auction. If you choose to purchase and sell vehicles belonging to the auction, you may do so.

## **MOTORCYCLE DEALER LICENSE**

As a retail motorcycle dealer, you are licensed to sell retail or wholesale motorcycles in your inventory to the general public or any other dealer or wholesaler. As a licensed motorcycle dealer, you are not required to sell a specific number of motorcycles to maintain your license. However, you must have a dealer license if you do the following:

- sell or attempt to sell more than five (5) motorcycles in a calendar year.

## **MOTORCYCLE WHOLESALER LICENSE**

Licensed motorcycle wholesalers are limited to selling motorcycles to licensed motorcycle dealers or other licensed motorcycle wholesalers. In addition, as a licensed wholesaler, you are not required to sell a specific number of vehicles to maintain your license. However, you must have a motorcycle wholesaler license if you do the following:

- sell or attempt to sell more than five (5) motorcycles in a calendar year.

## **TRAVEL TRAILER DEALER LICENSE**

You are required to be a travel trailer dealer if you do the following:

- sell or attempt to sell one travel trailer that has never been titled.
- sell or attempt to sell more than three (3) previously titled travel trailers in a calendar year.

**(NOTE:** These dealers are issued a regular dealer's license marked *Travel Trailer Dealer*. This dealer license expires on December 31 regardless of issue date. Only travel trailers [also called campers, RVs, and motor homes] are issued this type of license. The sale of utility and other trailers do not require a dealer license.)

## **(TEMPORARY) TRAVEL TRAILER/CAMPER DEALER LICENSE**

You must be a licensed South Carolina travel or camper trailer dealer to apply for a temporary travel trailer dealer license. This temporary license permits you to exhibit and sell travel trailers or motor homes at fairs, recreational and sports shows, vacation shows and other similar events. Dealers may not purchase more than six (6) temporary licenses in one year. This license applies to only one dealer operating in one location and is not transferable to any other dealer or location.

The temporary travel trailer/dealer camper license is valid for 10 consecutive days, and the fee

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is \$20 per license. DMV Form 417-C, "Application for a Temporary Motor Home or Travel Trailer Dealer License" must be completed in order to obtain this license.

## **TRANSPORTER PERMIT**

A "transporter" is a person engaged in the business of moving motor vehicles for the following purposes:

- from a manufacturer to a dealer;
- from a railroad terminal to a storage facility;
- for further construction of cabs or bodies; or
- in connection with the foreclosure or repossession of a vehicle.

A person applying for a transporter permit must complete DMV Form DLA-3, Application for License as Motor Vehicle Transporter. The annual fee for a transporter permit is \$50. Transporters may also purchase transporter plates for an annual fee of \$10 per plate. Transporter plates may be transferred from vehicle to vehicle, but must not be used on vehicles that are loaned, rented, or leased. To use transporter plates you must have obtained a transporter permit or be an employee of the permit holder with your name and drivers license on file with the DMV.

## **Brokers and/or Internet Dealers/Wholesaler**

Brokers and/or Internet Dealers/Wholesalers must comply with all current dealer requirements.

## **PENALTY**

If you operate as a dealer, wholesaler, auto auction, or transporter without the proper license, you may be convicted of a misdemeanor and fined up to:

1. \$200 and/or imprisoned for up to 30 days for first offense.
2. \$1,000 and/or imprisoned for up to six (6) months for second offense.
3. \$10,000 and/or imprisoned for up to two (2) years for third and subsequent offenses.

# HOW TO APPLY

Before beginning business operations as a dealer or wholesaler, you must pay all required fees to the Department of Motor Vehicles. Depending upon the type of license you require and whether you have been licensed before, your licensing requirements may differ.

## INITIAL/NEW DEALER LICENSE APPLICATIONS

To obtain any type of dealer or wholesaler license, you must complete all required applications and pass an inspection by the Department of Motor Vehicles' Dealer Licensing and Audit Unit. As a first-time applicant or wholesaler changing to a retail dealer license you must, submit the following documents:

- DMV Form DLA-1, "Application for Dealer or Wholesaler License"
- DMV Form DLA-1B, "Motor Vehicle Dealer and Wholesaler Surety Bond" with an appropriate power of attorney
- Certificate of Completion from an approved eight (8) hour dealer pre-licensing class

No fees are required when submitting your application. Your application and documents must be presented or mailed to the address below:

**South Carolina Department of Motor Vehicles  
Dealer Licensing and Audit Unit  
P.O. Box 1498  
Blythewood, SC 29016-0023  
For questions, call (803) 896-2611**

### Application

DMV Form DLA-1, "Application for Dealer or Wholesaler License" is the application to complete for a dealer or wholesaler license. You must indicate the type of business you intend to operate, the address of your dealership and information regarding your employees. The application also requires you to provide estimates regarding the number of vehicles you expect to sell during the first year of operation.

### Surety Bond

DMV Form DLA-1B, "Motor Vehicle Dealer and Wholesaler Surety Bond" insures that every dealer or wholesaler applicant furnishes a surety bond. The amount of the bond varies depending on the type of dealer or wholesaler (see DMV form DLA-1B for details). You must submit your original Surety Bond and Power of Attorney with DMV Form DLA-1, "Application for Dealer or Wholesaler License" at the time of your application. The purpose of the bond is to provide indemnity for loss or damage caused an individual due to fraud or fraudulent representation in relation to a sale or transfer of a motor vehicle by a licensed dealer, wholesaler, or their employees.

Your bond must be in effect before the DMV will issue a license to you. The owner, partner, or corporate officer of the dealership must sign the surety bond. If you should change your bonding company, you must mail a new surety bond and Power of Attorney to the Dealer Licensing and Audit Unit as indicated below:

South Carolina Department of Motor Vehicles  
Dealer Licensing and Audit Unit  
P.O. Box 1498  
Blythewood, SC 29016-0023

## **DEALER PRE-LICENSE COURSE**

**Certificate of Completion from an Approved Eight (8) Hour Dealer Pre-licensing Class.**  
(Note: Franchised dealers, wholesalers, auto auctions, and motorcycle dealers are exempt from the pre-license course.)

## **INFORMATION CHANGES**

Any changes in the information provided on your application (DMV Form DLA-1, "Application for Dealer or Wholesaler License") must be reported to the SCDMV Dealer License & Audit Unit within 30 days, along with a new surety bond or a rider. If you move your dealership to a new location, change the name of the business, change ownership or change your status from a wholesaler to a dealer, you must complete and submit a new application. In the event you cease operating as a dealer or wholesaler, you must notify the DMV within 10 days and return your dealer or wholesaler license as well as any dealer plates issued to you.

## **INITIAL INSPECTION**

Once your application is processed by the Dealer Licensing and Audit Unit, a DMV agent will contact you to schedule an initial inspection of your place of business. During this inspection, the DMV agent will determine whether or not your place of business and operational procedures qualify you as a motor vehicle dealer. Depending upon your status as a dealer or wholesaler, certain requirements must be met for you to pass the inspection (see Sections 1-8 and 1-9 Dealership Requirements).

Once the inspection is completed, you will be notified within 10 working days whether your license is approved or disapproved. If disapproved, you may request an administrative hearing to contest the DMV's action. See Section V of this manual on how to request an administrative hearing.

If you have multiple locations, you must apply for a separate license and have a separate surety bond for each location.

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# RENEWAL APPLICATIONS

Your dealer license expires 12 months from the month of issue, except travel trailer dealer licenses, which expire on December 31. To renew your dealer or wholesaler license, you must complete and submit the following documents to a local DMV field office:

- DMV Form DLA-1, "Application for Dealer or Wholesaler License",
- DMV Form DLA-1C, "Certification of Vehicles Sold by Dealer" (required if purchasing dealer plates).

Dealers may substitute another form to certify sales. However, the identical information that the DMV requires must be indicated. The DMV reserves the right to authorize other certifications.

**Individual bills of sale or other individual documents will not be accepted.**

(Note: If you purchased a new surety bond since your last application, you must submit your original bond and Power of Attorney when you renew your license at your local DMV Field office.)

## Inspections for Renewals

Some applicants require facility inspection prior to renewal. The following criteria determine whether or not an inspection is required for a renewal applicant:

1. The dealer or wholesaler license has been expired for more than 90 days;
2. The status of the license has changed (wholesaler to retail dealer or vice versa);
3. The name and/or address of the dealer or wholesaler changed;
4. The ownership or location changed.

(NOTE: If any of these changes occur, you must contact the Dealer Licensing and Audit Unit at 803-896-2611.)

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## TIPS TO REMEMBER...

- ◆ The name and address on your surety bond must match the name and address on your application.
- ◆ The names, addresses, and driver's license numbers of all your employees must be furnished on the reverse side of your application. If additional space is needed, please attach a separate sheet of paper.
- ◆ Prior to moving or changing the name of your dealership, a DMV agent must inspect your new location before a new license can be issued.
- ◆ If you have been assigned a new address by the 911 system or post office, you must submit a new application, letter from the Post Office and an address change rider from your bond company.
- ◆ If you are applying for a retail license, you must provide your South Carolina sales tax number.
- ◆ If you are applying for a wholesale only license, you must provide your South Carolina Sales Tax exempt number.
- ◆ You should submit only original documents for processing.
- ◆ Before you apply for a dealer license, you must file articles of authorization with the S. C. Secretary of State. Example: "Inc" or "LLC."

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# DEALERSHIP REQUIREMENTS

Certain criteria must be met for your business to operate legally in South Carolina. Your Dealer Agent can explain the requirements and offer suggestions.

## BUILDING REQUIREMENTS

### **Building Structure (Not Required for Wholesalers)**

As a motor vehicle dealer, you must maintain a bona fide established place of business that is a permanent enclosed structure or building. Your building, whether a permanent structure or mobile home, must have at least 96 square feet of floor space. The structure cannot be a residence, tent, temporary stand or other temporary quarters. The building also must be easily accessible to the public. The principal business conducted in the building by the dealer (except motorcycle dealers) must be the selling or exchanging of vehicles. Your records, files, and books shall also be maintained and housed in this structure. Businesses must post the days and hours of operation.

### **Sign (Not Required for Wholesalers)**

Your business location must display a permanent sign with lettering that is at least six inches (6") in height. Your sign must be clearly legible from the nearest avenue of traffic, and must clearly identify your business.

### **Lot (Not Required for Wholesalers)**

As a dealer, you must have a reasonable area and/or lot to properly display motor vehicles. Reasonable area is defined as a 2,000-square-foot minimum, excluding alleys and driveways. The total area may include a display area and lot located at the same address. Dealers are encouraged to contact the Dealer Licensing and Audit Unit at (803) 896-2611 to discuss facility requirements.

### **Zoning and Business License Regulations**

Dealers should research and comply with all local zoning and business license regulations.

### **Garage Liability Insurance**

You must obtain garage liability insurance prior to applying for dealer demonstration plates. Upon cancellation of garage liability insurance, you will be required to surrender dealer plates to your local DMV. If you decide to operate your business without dealer plates, obtaining garage liability insurance is optional. **(NOTE: Dealers may discuss any potential issues with their respective dealer agents by contacting the Dealer Licensing and Audit Unit (803) 896-2611.)**

## DISPLAYING YOUR DEALER OR WHOLESALER LICENSE

Once you receive your dealer license, you must display it in a prominent place in your business.

## BUYER'S GUIDE

Federal law requires that every used vehicle for sale on a dealer lot must have a completed "Buyer's Guide Form" in the window. This form indicates whether the used vehicle is being sold

under warranty or "As Is" without a warranty. When the vehicle is sold, one copy of the form must remain with the dealer's records and another copy must be given to the customer buying the vehicle. The purchaser should sign both copies. This requirement protects dealers and customers from any misunderstandings. A "Buyer's Guide" must be signed by both parties to be enforceable.

## **RECORDS**

Every dealer is required to keep complete records of each sales transaction at the licensed location. These records must be maintained for four (4) years from the date of the transaction. To be accurate and complete, these records must reflect the following on all incoming and outgoing documents:

1. The correct name and address of the buyer and seller of the vehicle.
2. The correct date of the transaction.
3. A correct description of the vehicle, which includes the vehicle identification number, year, make, model, and body type.
4. The Federal Odometer Disclosure Statement; the odometer reading at the time the vehicle was transferred to and from the dealer or wholesaler.

The DMV requires that these records be available for inspection and duplication by a DMV agent during normal business hours at all reasonable times. Your records must be maintained in a reasonably organized and orderly manner. All entries must be legible upon inspection. If your records are not kept in this fashion, you could receive a sanction from the DMV. Any dealer or wholesaler who fails to keep the required records or fails to make them available upon inspection is guilty of a misdemeanor. Upon conviction, the dealer or wholesaler may be fined up to \$200, imprisoned for up to 30 days and/or lose his or her dealer license.

## **SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS**

All businesses including Motor Vehicle Dealers that extend credit to consumers and have gross sales in excess of \$150,000 are required to file a "Consumer Credit Grantor Notification" form with the South Carolina Department of Consumer Affairs (SCDCA). Additionally, all businesses, including Motor Vehicle Dealers, that impose a finance charge on credit sales or consumer loans in excess of 18% APR must file a Maximum Rate Schedule with the SCDCA. Also, every Motor Vehicle Dealer charging closing fees on a Motor Vehicle sales contract shall pay a one time registration fee of ten dollars (\$10.00) during each state fiscal year (July - August 31).

For more information contact:  
South Carolina Department of Consumer Affairs  
3600 Forest Drive, Suite 300  
P.O. Box 5246  
Columbia, South Carolina 29250  
Website: [www.sccoconsumer.gov](http://www.sccoconsumer.gov)  
(Forms available on Web)  
or call (803) 734-4200

## **SOUTH CAROLINA DEPARTMENT OF REVENUE**

You can register for the most common state business taxes by completing Form SCTC-111, Business Tax Application, which can be obtained from the Department of Revenue (DOR) website at [www.sctax.org](http://www.sctax.org) or by calling DOR's Forms Office at (803) 898-5599. You can use this

form to register for a retail license, a purchaser's certificate of registration, solid waste tax, business personal property tax, and income tax withholding.

### **\$300 MAXIMUM TAX**

A maximum sales tax of \$300 is imposed on the sale or lease of motor vehicles, boats, aircraft, motorcycles, trailers or semi-trailers pulled by a truck tractor, horse trailers, recreational vehicles and certain self-propelled light construction equipment. For more information on the maximum tax, please contact the DOR Sales Tax Department at (803) 898-5800.

### **SALES OF MOTOR VEHICLES TO NON-RESIDENTS**

Sales of new or used motor vehicles, trailers, semi-trailer and pole trailers to residents of another state are taxed at the rate imposed by the purchaser's state of residence. The tax cannot exceed the \$300 maximum tax imposed by South Carolina.

For South Carolina sales tax purposes, sales tax due on a sale to non-residents of new or used motor vehicles, trailers, semi-trailers, and pole trailers that are registered and licensed in the purchaser's state of residence are taxed at the lesser of the following:

1. Sales tax that would be imposed on the purchaser's state of residence, or
2. Tax that would be imposed under Chapter 36 of the South Carolina Code of Laws

No sales tax is due in South Carolina if a non-resident purchaser cannot receive credit in their resident state for sales tax paid to South Carolina. Form ST-385, Vehicle Affidavit for Nonresident must be completed on each vehicle sold to a non-resident.

For more information pertaining to taxes, visit the Department of Revenue's home page on the Internet at [www.sctax.org](http://www.sctax.org). Tax laws, regulations, policy documents, publications, forms, electronic services, various links and attorney general opinions may be found there.

### **SALES TAX**

As a retail dealer, you must collect sales tax on any sale. You can obtain your required sales tax number from the Department of Revenue. For each sale, you should complete DMV Form 400, "Application for Certificate of Title and Registration for Motor Vehicle or Manufactured Home/Mobile Home," and indicate your dealer license number and sales tax number.

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# DEALER PLATES

Once you become a licensed dealer or wholesaler, you may purchase dealer (demonstration) plates from your local DMV. The purchase and use of these plates are limited as listed below:

## QUALIFYING FOR DEALER PLATES

To be eligible to purchase dealer plates, you must:

1. Be a licensed South Carolina dealer or wholesaler;
2. Furnish proof of garage liability insurance; and
3. Document the number of vehicles sold in the previous year on DMV Form DLA-1C, "Certification of Vehicles Sold by Dealer."

If a dealer has been in business one year, s/he may purchase dealer plates based on the number of vehicles sold in the preceding 12 months. (**Example:** The first 20 vehicles sold, you may purchase 2 dealer plates; for each 15 additional vehicles you sell beyond that number, you may purchase 1 additional plate.) This formula will vary depending upon the type of dealer plate you purchase. (**NOTE: Issuance of dealer plates to new dealers will be based on estimated sales.**) The table below lists the types of dealer plates available:

DEALER TYPE	DEALER PLATE INFORMATION	SPECIAL RESTRICTIONS (OTHER RESTRICTIONS LISTED BELOW)
Auto, Motorcycle or Travel Trailer/Camper/RV, Dealers and/or Wholesalers	2 plates may be purchased after 20 sales. 1 additional plate may be purchased for each 15 sales. No maximum limit on purchase.	Dealers are restricted from carrying cargo. Purchasers may carry cargo for up to 7 days with a demo certificate.
Heavy Trucks	No minimum sales required. No maximum limit on purchase.	May only be used on heavy trucks (16,000 lbs. or greater.) Dealers are restricted from carrying cargo. Purchasers may carry cargo for up to 3 days with a demo certificate.
Antique Dealer	Plates may be purchased after 5 sales. Purchases are not restricted by formula. No maximum limit on purchase.	May only be used on antique vehicles (30 years old or older).
Wholesale Auto Auction	2 plates may be purchased after 20 sales. 1 additional plate may be purchased for each 50 sales. Maximum limit is 75 plates.	Use to transport vehicles in the course of doing business.

Dealer plates cost \$20 per plate. Dealer plates are for demonstration vehicles. They cannot be used on wreckers, rollbacks, leased, rented, or service vehicles. The vehicle (except heavy trucks) cannot perform a commercial service.

The transfer of ownership between the same individual or corporation more than once is considered one sale. Multiple transfers of motor vehicles between dealers for the purpose of meeting eligibility requirements are prohibited.

## DEALER PLATE RESTRICTIONS

The use of dealer plates is limited to vehicles that are:

1. Owned by the dealership;
2. Assigned to the dealership; and
3. Issued to prospective buyers for test-driving purposes.

Vehicles equipped with dealer plates may be driven on South Carolina highways by owners, employees, and dealership corporate officers.

Employees, owners, and agents who drive or may drive dealer-owned vehicles using dealer plates must be listed on the dealer license application. If personnel changes occur that affect the listing, the DMV must be notified immediately by fax or in writing. Dealer employee revisions must include the following:

- dealer's name and dealer number;
- name of employee to be added or deleted along with the employee's address;
- employee's driver's license number; and
- signature of the shareholder of the dealership.

Prospective vehicle buyers may also drive motor vehicles with dealer plates while test-driving. If you choose to allow your customers to drive a vehicle, you must provide them with a completed DMV Form MV-38, "Motor Vehicle Demonstration Certificate," or DMV approved equivalent. Prospective buyers are limited to driving vehicles with dealer plates up to seven (7) days.

When demonstrating or test driving heavy-duty trucks 16,000 GVW or greater, the prospective buyer may use the truck to carry merchandise or cargo for up to three (3) days with a special heavy-duty dealer plate. You must provide the customer with a completed DMV Form MV-38, "Motor Vehicle Demonstration Certificate."

## PENALTY

Any person who misuses a dealer license plate may be fined \$300, required to forfeit the plate and/or lose his or her dealer license.

# TEMPORARY TAG LAW

A dealer of new or used vehicles should issue to the purchaser of a vehicle at the time of its sale a temporary license plate that must contain the following:

1. A rectangular box with a white background on the bottom of the plate in dimensions of not less than six inches (6") wide and two (2") inches high.
2. The rectangular box must contain, in characters not less than one-quarter ( $\frac{1}{4}$ ) inch wide and one-and-one-half ( $1\frac{1}{2}$ ) inches high, the expiration date of the period within which the purchaser must register the vehicle.
3. The expiration date, which must be written using a permanent black marker with at least a one-quarter ( $\frac{1}{4}$ ) inch wide tip. It must contain a numerical month, date, and year.

**(NOTE: Temporary tags must be dated 45 days from the purchase date.)**

The temporary license plate must be made of heavy stock paper or plastic, inscribed with contrasting indelible ink and designed to resist deterioration or fading from exposure to the elements during the period the tag is displayed. The plate must contain the dealer's name, city, and phone number, or the dealer's name and computer website address. Expiration date should be legible from a distance of 25 feet.

The "Bill of Sale," title or a copy of one of the two (2) documents must be maintained in the vehicle at all times to verify the vehicle's date of purchase to a law enforcement officer. The "Bill of Sale," title or a copy of either document must contain:

1. a description of the vehicle;
2. the name and address of both the seller and purchaser of the vehicle; and
3. the date of sale.

**A dealer may issue a temporary license plate only to a purchaser of a vehicle and may not use a temporary license plate for any other purpose.** A dealer who issues a temporary license plate or allows a temporary plate to be issued and violates this law is guilty of a misdemeanor and, upon conviction, must be fined \$100 for each occurrence. S/he also may receive sanctions against his or her dealer license.

## TRANSFERRING TAGS

South Carolina law allows owners of vehicles to transfer license plates from one vehicle to another. If a person intends to transfer a license plate from one vehicle to another vehicle, s/he may place the license plate to be transferred on the newly acquired vehicle on the date of purchase. The "Bill of Sale" for the new vehicle and a copy of the registration that corresponds to the license plate must be maintained in the new vehicle at all times to verify its date of purchase to a law enforcement officer.

The purchaser must register the vehicle with the DMV within 45 days from its purchase date. A person who transfers a license plate or allows a license plate to be transferred and violates this law is subject to the vehicle registration and licensing provisions of the law. Effective March 1, 2006, a consumer may transfer a license plate only to a specific vehicle one (1) time without paying additional property taxes.

# NOTES

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# **SECTION II**

## **TITLING AND REGISTERING VEHICLES**

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# SOUTH CAROLINA REQUIREMENTS

As a dealer, you may provide registration services to your customers. If you choose to provide these services, you must have a good understanding of South Carolina requirements. Errors can cause more work for you, as well as delays for your customer.

A South Carolina resident who purchases a new or used vehicle must obtain a South Carolina title and registration within 45 days of purchasing the vehicle. This time limit is the same whether customers are purchasing new license plates or transferring old ones. If you choose to process the title or registration for your customer, you must deliver the title or registration to the customer within the same 45-day period.

You may give the title and all the necessary documentation required to title the vehicle to the purchaser. **If you give your customer the title and other necessary documents, it is important that you maintain a "customer-signed receipt" specifying the customer accepts responsibility for titling and registering the vehicle. This receipt will verify you have complied with the law requiring that the title be delivered within 45 days. You must also maintain copies of all documents surrendered to the customer since customers will sometimes lose their records. Providing these documents to the customer is considered the same as delivering the title.**

For a financed sale, you must have the new owner's name and lien information recorded on the title and DMV Form 400, "Application for Certificate of Title and Registration for a Motor Vehicle or Manufactured Home/Mobile Home."

Valid license plates that will not be transferred should be returned to the DMV immediately or on the same day of insurance cancellation. Customers who return their plates to the DMV will receive a receipt and may request a prorated refund if their plates are still valid for more than 12 months. If the vehicle is sold or used as a trade-in, county property taxes may also be refunded by the county treasurer's office.

Specific information is required for titling and registering new and used vehicles. As a dealer, you should be aware of the documents you need, as well as the requirements and fees for each type of transaction. If your dealership helps customers finance their newly purchased vehicles, customers may ask you to include the sales tax, title, and tag in the total financial agreement for the vehicle. Having that knowledge helps you help your customer.

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# **TYPES OF TITLES & MANUFACTURER'S CERTIFICATE OR STATEMENT OF ORIGIN**

## **SOUTH CAROLINA CERTIFICATE OF TITLE**

A title is issued to an individual vehicle owner. When a vehicle is sold, the seller must provide the title and the title must be submitted to the DMV before a new title can be issued to the buyer. The back of the title must be completed and properly assigned to the buyer. If the title was issued before June 19, 1989, DMV Form 4031, "Secured Bill of Sale," or a Property Tax Odometer (PTO) Form must also be submitted, indicating the sale price of the vehicle and odometer information. Certificates of Title issued after June 19, 1989 include an area on the back of the form to list odometer information. If the vehicle owner's title is lost, the owner must obtain a duplicate title from the DMV. The DMV will not accept the title if you erase or "white out" any portion of the form.

## **OUT-OF-STATE TITLE**

An out-of-state title is a legal document created by a state other than South Carolina. It lists the ownership and vehicle information. An out-of-state title is used to issue a South Carolina title to a vehicle entering South Carolina from another state. The vehicle could have been purchased by a South Carolina resident from an out-of-state dealer or individual, or it could be a vehicle owned by a new South Carolina resident. In combination with this title service, a new license plate can be issued or a plate can be transferred.

## **MANUFACTURER'S CERTIFICATE OF ORIGIN (MCO) OR MANUFACTURER'S STATEMENT OF ORIGIN (MSO)**

The Manufacturer's Certificate of Origin (MCO) or Manufacturer's Statement of Origin (MSO) is a document issued by the manufacturer recording the first transfer of the vehicle from the manufacturer to the dealer or distributor. The MCO or MSO lists the vehicle identification number, vehicle description, and the dealer or distributor receiving the vehicle.

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## TRUTH IN MILEAGE REGULATIONS

The odometer mileage statement on South Carolina Certificates of Title issued after June 19, 1989, meets the Truth in Mileage standard. Certificates of Title issued before that date do not meet the Truth in Mileage standard. The odometer statement must be given for every vehicle.

The first assignment of a Certificate of Title must now be completed by the owner on the title document itself. A separate secured assignment will not be accepted.

Exceptions were written into the regulations for those persons signing the Certificate of Title using DMV Form 5047, Secured Power of Attorney - Odometer Disclosure. This form is only used by dealers, wholesalers, auto auctions and insurance companies when the buyer and the seller are one and the same. The Secured Power of Attorney - Odometer Disclosure can only be used:

- if the Certificate of Title is being held for a lien; and
- if the Certificate of Title is lost and a duplicate is needed.

In addition to stating the odometer reading at the time of sale, the odometer statement is a certification by the seller of the vehicle to the buyer that to the best of his or her knowledge:

- the odometer reading reflects the actual mileage;
- the odometer reading reflects the amount of mileage in excess of the vehicle's mechanical limits; or
- the odometer reading is not the actual mileage.

Dealers should follow the instructions listed on the back of the DMV form 5047. Odometer fraud is a violation of both state and federal law.

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# STATE AND COUNTY TAXES

## SALES TAX

In South Carolina, the law requires that everyone, including individuals, pay sales or excise tax on every motor vehicle or motorcycle for which a new South Carolina Certificate of Title is issued. Sales tax is due when the vehicle is sold to a consumer. The amount of the tax is five percent (5%) of the fair market value, or total purchase price, of the vehicle. However, the amount cannot exceed \$300. For out-of-state sales, you must complete Form ST-385, Department of Revenue Affidavit, and collect sales tax up to \$300 if the state charges sales tax and has a reciprocity agreement with South Carolina. For further information regarding sales taxes, contact the South Carolina Department of Revenue at (803) 898-5800 or in writing to 301 Gervais Street, Columbia, SC 29214.

## PERSONAL PROPERTY TAX

In South Carolina, counties must receive yearly property tax payments for vehicles before registrations and decals can be issued.

## PURCHASING NEW PLATES

As a dealer in South Carolina, you have the option of giving your customers extra time to pay their property taxes for vehicles purchased by South Carolina residents by completing DMV Form 4031 Bill of Sale Form with a Property Tax Odometer (PTO) section. This form will defer the property tax on the vehicle for 120 days. The DMV does not provide Property Tax Odometer (PTO) Forms. To order Bill of Sale Forms with a Property Tax Odometer (PTO) section, contact the Carolinas Independent Automobile Dealers Association (CIADA) by calling 1-800-432-4232.

You must disburse the above copies in the following manner:

1. keep a copy for your files;
2. give one copy to the customer; and
3. send the top copy (secured sheet) and the pink copy to the DMV along with the title and registration paperwork.

Please note that this extension for the payment of property taxes does not apply to the titling and registration of vehicles. Vehicles must still be titled and registered in South Carolina within 45 days from the date of purchase.

## TRANSFERRING PLATES

Customers who transfer a license plate from one vehicle to a newly purchased vehicle are not required to pay property taxes at the time of the transfer. They will be billed by their county treasurer's office when the taxes are due again. Any person who willfully or knowingly makes a false statement for the purpose of avoiding any tax is guilty of a misdemeanor in this state and may be fined up to \$3,000 and/or imprisoned for up to one (1) year.

# OUT-OF-STATE BUYERS

An out-of-state customer who purchases a vehicle in South Carolina has different titling and registration needs. To provide better customer service, you should be aware of the options available to you and your customers.

## TEMPORARY PLATES

Many states do not allow new vehicles to be driven on the road without proper registration or tags. In these states, the proof of purchase paperwork and a dealership paper tag is not enough. They require official registration.

In South Carolina, the law allows for this instance and offers the customer a temporary plate and registration through the DMV. As a dealer, you have the option of processing this paperwork for your customer just as you would process South Carolina title and registration paperwork, or you may purchase temporary license plates from the DMV and issue them from your office.

The temporary plate and registration is good for 30 days and may be used to transport the vehicle back to the customer's resident state. You can issue these plates only to customers who purchased their vehicles from you and who will be permanently licensing their vehicles in another state. The plate is not transferable to any other person or vehicle.

South Carolina law requires that you maintain a permanent record of all the temporary plates and registrations you issue. Each record should be kept for at least one (1) year from the date of issue. If you choose to issue the plates and registrations from your dealership, you should request the following form from the DMV:

- DMV Form 433, 30-Day Temporary Plate Registration

If you do not wish to issue these plates from your place of business, you may inform your customers of the proper procedures and refer them to your local DMV branch office.

## PENALTY

Any person found guilty of the misuse of a temporary license plate or permit is guilty of a misdemeanor in this state and may be fined up to \$200 and/or imprisoned for up to 30 days.

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## **WORKING WITH OTHER STATES**

If your place of business is located near the state line, you may have more out-of-state purchases than other dealerships. If this is the case, you may wish to contact the other state and find out more about their titling and registration procedures. You may be able to prepare the paperwork from that state for your customer.

## **COURTESY VEHICLES**

A South Carolina resident can purchase a vehicle from an out of state dealer, who will be responsible for transporting the vehicle to a S. C. dealer so that the customer can pick the vehicle up from a local dealership.

SC Code of Law §2-37-2610 allows the use of a property tax odometer (PTO) form for this situation, and states that taxes are not due on these vehicles for 120 days. When this type of transaction occurs, the dealer should write on the PTO form "courtesy delivery" so that DMV and the County will know that the owner has 120 days to pay his/her property taxes.

Courtesy deliveries DO NOT require a paid tax receipt, provided that the PTO clearly indicates "courtesy delivery." In addition, courtesy deliveries are also subject to the same requirements for use tax as other out of state sales: the owner must show that sales tax has already been paid, or that the out of state dealer has a S. C. sales tax number, OR that the vehicle is exempt from sales taxes in S. C. If the owner does not meet one of these requirements, DMV will collect any S. C. use tax due:

## **TIPS TO REMEMBER WHEN TITLING AND REGISTERING VEHICLES:**

- Use clear and legible handwriting. If rubber stamps are used, they must be properly aligned.
- Properly assign the back of the title.
- Type within the spaces provided on DMV Form 400, Application for Certificate of Title and Registration for Motor Vehicle or Manufactured Home/Mobile Home – not on the lines.
- Verify that the information on DMV Form 400, Application for Certificate of Title and Registration for Motor Vehicle or Manufactured Home/Mobile Home, and the title match.
- Verify the vehicle identification number on the vehicle against the number on the title.
- Verify the owner's name and signature.
- Before choosing an option, read the instructions on the odometer statement carefully on DMV Form 400, Application for Certificate of Title and Registration for Motor Vehicle or Manufactured Home/Mobile Home.
- Properly complete all lien information.
- Abbreviate the owner's address on the form if it is more than 30 characters long.
- Provide the correct dealer and sales tax number.

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## Title and Registration Documents Required for Various Transactions

SCENARIO	TYPE OF TRANSACTION	DOCUMENTS REQUIRED
A S.C. resident purchases a brand new vehicle from a S.C. dealer.	Title with New Registration	<ul style="list-style-type: none"> <li>▪ DMV Form 400</li> <li>▪ MCO (Manufacturer's Certificate of Origin) or MSO (Manufacturer's Statement of Origin)</li> <li>▪ PTO (Affidavit &amp; Notification of Sale of Motor Vehicle)</li> </ul>
A S.C. resident purchases a used vehicle previously titled and registered in another state.	Title with New Registration	<ul style="list-style-type: none"> <li>▪ Form 400</li> <li>▪ Out-of-State Title</li> <li>▪ PTO (Affidavit &amp; Notification of Sale of Motor Vehicle)</li> </ul>
A S.C. resident purchases a used vehicle previously titled and registered in South Carolina.	Title with New Registration	<ul style="list-style-type: none"> <li>▪ Form 400</li> <li>▪ S.C. Title</li> <li>▪ PTO (Affidavit &amp; Notification of Sale of Motor Vehicle)</li> </ul>
A S.C. resident purchases a brand new vehicle from a S.C. dealer.	Title with a Transfer Plate	<ul style="list-style-type: none"> <li>▪ DMV Form 400</li> <li>▪ MCO (Manufacturer's Certificate of Origin) or MSO (Manufacturer's Statement of Origin)</li> <li>▪ PTO (Affidavit &amp; Notification of Sale of Motor Vehicle)</li> <li>▪ Valid License Plate</li> </ul>
A S.C. resident purchases a used vehicle previously titled and registered in another state.	Title with a Transfer Plate	<ul style="list-style-type: none"> <li>▪ DMV Form 400</li> <li>▪ Out-of-State Title</li> <li>▪ PTO (Affidavit &amp; Notification of Sale of Motor Vehicle)</li> <li>▪ Valid License Plate</li> </ul>

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SCENARIO	TYPE OF TRANSACTION	DOCUMENTS REQUIRED
A S.C. resident purchases a used vehicle previously titled and registered in South Carolina.	Title with a Transfer Plate	<ul style="list-style-type: none"> <li>▪ DMV Form 400</li> <li>▪ S.C. Title</li> <li>▪ PTO (Affidavit &amp; Notification of Sale of Motor Vehicle)</li> <li>▪ Valid License Plate</li> </ul>
A S.C. resident purchases a used vehicle previously titled and registered in another state.	Title with Transfer & Replace Plate	<ul style="list-style-type: none"> <li>▪ DMV Form 400</li> <li>▪ Out-of-State Title</li> <li>▪ PTO (Affidavit &amp; Notification of Sale of Motor Vehicle)</li> <li>▪ Form 452 (Lost/Stolen or Destroyed License plate Affidavit Form)</li> </ul>
A S.C. resident purchases a used vehicle previously titled and registered in South Carolina.	Title with Transfer & Replace Plate	<ul style="list-style-type: none"> <li>▪ DMV Form 400</li> <li>▪ S.C. Title</li> <li>▪ PTO (Affidavit &amp; Notification of Sale of Motor Vehicle)</li> <li>▪ Form 452 (Lost/Stolen or Destroyed License plate Affidavit Form)</li> </ul>
A S.C. resident wants to purchase a vehicle and wants to trade in the currently owned vehicle. The customer has lost the S.C. title.	Duplicate Title	<ul style="list-style-type: none"> <li>▪ DMV Form 400</li> <li>▪ Satisfaction of Title Lien form (if applicable)</li> </ul>

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# **ELECTRONIC VEHICLE REGISTRATION (EVR) PROGRAM**

The South Carolina Electronic Vehicle Registration (EVR) Program allows authorized business partners to apply for registrations and titles electronically. The EVR system is supplied through a Service Provider (third party) who works with the DMV to provide licensed South Carolina auto dealers with a computer-based system that provides the ability to register and title vehicles by electronic means. The DMV provides dealer/business partners with materials and authorization to process customers' vehicle registrations and make initial applications for their vehicle titles. This allows an auto dealer/business partner to register the vehicle and put it on the road with valid registration in the same day, which minimizes the need for temporary plates.

With EVR, everyone is a winner. Dealers and other partners win because they save time and money; customers win because they get one-stop shopping without the wait for registration and title application processing; DMV wins because customers can be served efficiently.

Some of the requirements to participate in the EVR program are as follows:

- the dealer must be in active licensed status with the DMV;
- The dealer must have and maintain a sales volume of 420 units per year;
- The dealer must agree to process a minimum of 90% of his or her eligible transactions through the EVR program; and
- The dealer must maintain an error ratio of no more than 2%.

For further information related to this program, you may review the SCDMV Electronic Vehicle Registration Program Standards at [www.scdmvonline.com](http://www.scdmvonline.com) or contact the service provider listed below:

Computerized Vehicle Registration (CVR) at [www.cvrreg.com](http://www.cvrreg.com) or 1-800-333-6995.

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# NOTES

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# **SECTION III**

## **DEALER AUDITS AND INSPECTIONS**

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# DEALER LICENSING AND AUDIT UNIT

The DMV is responsible for all dealer and wholesaler licensing and inspections. The Dealer Licensing and Audit Unit has been appointed to carry out this statewide responsibility for the DMV.

DMV dealer agents that are located and assigned throughout the state conduct the majority of dealer audits and inspections. However, other authorized agents may also conduct inspections and will have proper credentials to identify themselves to you. DMV dealer agents conduct initial inspections for new dealers and wholesalers, investigate customer complaints against dealers and wholesalers, and conduct random audits of dealers and wholesalers on a routine basis or as necessary.

Should you have questions or concerns about proper procedures or legal requirements, you may contact the DMV Dealer Licensing and Audit Unit by dialing (803) 896-2611. Someone from the DMV Dealer Licensing and Audit Unit can also identify and supply you with the phone number for your local dealer agent.

## PRE-LICENSING INSPECTION

After preliminary processing of your application for a dealer or wholesaler license, a DMV dealer agent will contact you to schedule your first inspection. During this inspection, s/he will determine whether your place of business and operational procedures qualify you for the license you have applied for. When inspecting your place of business, the DMV dealer agent will complete DMV Form DLA-2, Licensed Dealer Auditors Report, discuss the findings with you, and recommend to the DMV that your license be approved or disapproved, and the reason(s) for the approval or disapproval. Regardless of the outcome, you will be provided with a copy of DMV Form DLA-2, Licensed Dealer Auditors Report detailing the result of the inspection and any deficiencies indicated. If you are disapproved and wish to continue with the application process, you may make the appropriate improvements and request that your dealership be re-inspected; you may also appeal the disapproval by requesting an administrative hearing. See Section V of this manual on how to request an administrative hearing.

After you pass your inspection, you will receive an official correspondence from the DMV indicating how to proceed with your license purchase.

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## **DEALER LICENSE INSPECTION CRITERIA**

Refer to Section I, DEALERSHIP REQUIREMENTS for detailed requirements.

During the initial inspection, the DMV dealer agent will inspect your business for the following:

- ◆ proper building structure;
- ◆ proper signage; and
- ◆ proper lot

### **TIPS TO REMEMBER:**

Your place of business will not pass inspection, if the DMV dealer agent finds any of the following:

- ◆ you do not have a bona fide place of business;
- ◆ your principal business is not buying, selling or exchanging vehicles (except motorcycle dealers);
- ◆ you do not have a building or your building does not meet the necessary qualifications;
- ◆ you do not have a sign or your sign does not meet the necessary qualifications;
- ◆ you do not have an adequate lot and/or display area to display your vehicles;
- ◆ your business is not located at the address on your application.

## **WHOLESALE INSPECTIONS**

During the initial visit, the DMV dealer agent will inspect your business to ensure that you have an appropriate place to conduct business. You are not required to house your business in a separate structure or display your vehicles on an open lot, but you should have adequate space to conduct your business transactions.

### **TIPS TO REMEMBER:**

Your place of business will not pass inspection if any of the following is found:

- ◆ you do not have a bona fide place of business;
- ◆ your business is not located at the address listed on your application.

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# DEALER AND WHOLESALER AUDITS

Dealer and wholesaler audits are conducted at random; you will not be notified when an audit is required of your place of business. When a DMV dealer agent arrives, you must give him or her complete cooperation. The agent understands your concerns and will do all that is possible to complete your audit in a timely and professional manner. The audit will follow a set pattern, and the DMV dealer agent should proceed in a similar manner as follows:

- The agent will show you his or her DMV credentials and inform you of the purpose of the visit.
- The agent will ask to see all titles on hand in your place of business. S/he may temporarily remove any open titles from your files to make the appropriate copies. Once copies are made, the original will be returned to the dealer. The agent may request a copy of any titles not assigned to your dealership and require them to be completed. Agents will issue a receipt for any and all items removed from your dealership.
- The agent will record dealer information such as the name of your business, owner, address, dealer type, dealer number, and the date of the audit.
- The agent will record the vehicle identification numbers of the vehicles on your lot and check your records to ensure that incoming documents related to each vehicle are maintained.
- The agent will review the records of vehicles sold since your last audit or inspection to determine whether proper incoming and outgoing records are maintained for each transaction.
- The agent will request that the dealer account for all demo plates. The agent may also verify the previous year's sales volume to justify the number of dealer plates obtained by the dealer.
- The agent will record garage liability insurance information if the dealer has dealer plates.
- The agent will record any violations found in your place of business.
- The agent will answer any questions you may have.
- The agent will advise you via DMV Form DLA-2, Licensed Dealer Auditors Report of his or her findings. However, any sanctions resulting from the audit will be issued from headquarters and delivered in written form.

**(NOTE: A random audit or administrative investigation conducted in your place of business does not imply that you are suspected of any misconduct or wrongdoing.)**

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# RECORD INSPECTIONS

Anytime a DMV dealer agent inspects or audits your place of business, a thorough review of your records will take place. It is important that you organize all of your records, ensure that they are legible, and maintain the proper supporting documents for your transactions.

South Carolina law requires that you maintain records on all transactions for four (4) years from the date of the transaction. All records must be kept at the licensed place of business and must be available during reasonable business hours. The agent will review your records for the following information:

## Acquired Vehicles

1. The true name of the person or persons from whom the vehicle was acquired.
2. The correct and complete address of the person or persons from whom the vehicle was acquired.
3. The correct date of the transaction.
4. A complete description of the vehicle including the vehicle identification number, make, model, and type of vehicle.
5. The correct odometer statement. A copy of the statement received by the dealer must be kept. This copy could be on the back of the Certificate of Title, a Bill of Sale, or on a separate odometer disclosure statement.

## Transferred Vehicles

1. The true name of the person or persons to whom the vehicle was transferred or sold.
2. The correct and complete address of the person or persons to whom the vehicle was transferred or sold.
3. The correct date of the transaction.
4. A complete description of the vehicle including the vehicle identification number, make, model, and type of vehicle.
5. The correct odometer statement. A copy of the statement received by the dealer must be kept. This copy could be on the back of the Certificate of Title, a Bill of Sale, or on a separate odometer disclosure statement.

## All Transactions

Titles, bills of sale, odometer statements, and other documents containing the required information for each transaction:

## Dealer Plates

1. The location of the dealer plates issued to the dealership.
2. Documentation of the correct use of dealer plates.
3. Verification of garage liability insurance.

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**TIPS TO REMEMBER:**

Your cooperation is necessary to complete the inspection process. Failure to cooperate with the agent or produce the required records may result in sanctions being imposed against the dealership.

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# NOTES

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# **SECTION IV**

## **COMPLAINTS**

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# COMPLAINT INVESTIGATIONS

DMV dealer agents also have authority to conduct administrative investigations resulting from complaints against dealers and wholesalers. In most cases, the type of complaint registered with the DMV determines the depth of the investigation. Customers registering complaints must complete DMV Form DLA-5, Dealer Complaint Form, and submit it to the Dealer Licensing and Audit Unit along with copies of any pertinent paperwork. DMV Form DLA-5 requires the name and address of the dealership, as well as that of any salesperson that may be involved. Customers are asked to provide a complete and thorough report of any incident or complaint.

If a DMV dealer agent is called to administratively investigate a complaint against your place of business, you may not receive any warning. Once the agent arrives, you will be informed of the complaint and asked to provide any information you have regarding the incident or complaint. You must cooperate with him or her fully. Your records must be at the disposal of the agent to ensure a thorough investigation.

After conducting an administrative investigation, the agent will complete DMV Form DLA-5A, Investigation of Complaint Regarding Dealer/Wholesaler. The Dealer agent will review any pertinent records involved or indicated in the complaint and may make copies of your records. The agent will attempt to answer any questions you may have and you will be informed of the results of the investigation at a later date. Any criminal violations of laws will be transferred to an appropriate law enforcement agency. Non-criminal issues not under the jurisdiction of the Department of Motor Vehicles will be forwarded to South Carolina Consumer Affairs or other appropriate agency.

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# NOTES

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# **SECTION V**

## **LEGAL SECTIONS**

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# KNOW YOUR LEGAL RIGHTS

If you or someone employed at your place of business becomes the subject of an official complaint with the DMV or legal action in a court of law, you should be aware of your legal rights as a dealer. Knowing your options and possible penalties is vital.

In addition to the legal action someone can take against you in a court of law, a complaint can also be made against you with the DMV. In this case, the DMV will review the complaint and may begin an administrative process. Violation of law will be forwarded to the appropriate law enforcement agency. Complaints might not result in a lawsuit, but can still cost you time, money, and legal fees. You should be aware that if you are found guilty of any wrongdoing, your dealer or wholesaler license could be denied, cancelled, suspended, or even revoked.

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# DEALER VIOLATIONS

All South Carolina dealer and wholesaler licenses are subject to South Carolina laws. The DMV is responsible for administering these laws. Your license can be denied, suspended, cancelled, or revoked if the DMV determines you are responsible for doing any of the following:

- Making a material misstatement in the application for your license.
- Violating any provision provided for in South Carolina dealer laws.
- Being found by a competent court jurisdiction to have committed fraud connected with the sale or transfer of a motor vehicle.
- Employing fraudulent devices, methods or practices in connection with meeting the requirements placed on dealers and wholesalers by the laws of this state.
- Being convicted of any violation of law involving the acquisition or transfer of a title to a motor vehicle or any violation involving tampering with, altering or removing motor vehicle identification numbers or markings.
- Being found by a competent court jurisdiction to have violated any federal or state law regarding the disconnecting, resetting, altering or other unlawful tampering with a motor vehicle odometer.
- Refusing or failing to comply with the DMV's reasonable requests to inspect or copy the records, books, and files of the dealer or wholesaler.
- Failing to maintain records of each motor vehicle transaction as required by state and federal law pertaining to odometer records.
- Having given, loaned, or sold a dealer license plate to any person or otherwise allowing the use of any dealer license plate in any way not authorized by law.
- Improperly displaying a dealer plate on any vehicle or placing a dealer plate in the possession of any unauthorized person.
- Improperly using or issuing temporary license plates. A temporary license plate may be issued for a vehicle sold by the licensed dealer. The plate must contain the expiration date (45 days from the date of sale) and a bill of sale must be kept in the vehicle to indicate to law enforcement that it is a newly acquired vehicle.

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# DEALER SANCTIONS

The Department of Motor Vehicles may issue administrative sanctions against dealers or wholesalers determined to be in violation of South Carolina law or DMV policy relating to the buying, selling or trading of motor vehicles. Depending upon the severity and frequency of occurrences, the following sanctions will apply:

- Verbal Warning
- Written Warning, Level I or Level II
- Suspension (ranging from 7-30 days)
- Denial
- Cancellation
- Revocation

If as a result of a sanction(s), your dealer status is changed to any non-participating status; you will be notified in writing by the DMV and may contest that action by following the Administrative Hearing's process outlined in the next section. The statute of limitation for sanctions to remain in DMV files is three (3) years.

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# ADMINISTRATIVE HEARINGS

If your dealer or wholesaler license is denied, suspended or revoked by the DMV, you have the right to contest the action by requesting an administrative hearing.

The DMV will notify you in writing at your business or special mailing address of any intention to deny, suspend, or revoke your license at least 20 days prior to the date of the action. Within 10 days of receiving notice from the DMV, you may make a written request for a hearing. Your request for a hearing must be mailed to the address below along with a \$150 non-refundable filing fee.

**Division of Motor Vehicle Hearings  
S.C. Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 325  
Columbia, SC 29201  
(803) 734-3201**

The Division of Motor Vehicle Hearings has a similar name to the DMV, but is a separate agency administered by the Administrative Law Court to review these and other DMV determinations.

Failure to request a hearing within 10 days of notice makes the DMV's decision final. Upon the denial, suspension or revocation of a dealer or wholesaler license, the license and any dealer license plates issued must be returned to the DMV immediately if you do not contest the sanction through a hearing. The change in the dealer license status will take effect as previously stated in the correspondence sent to you.

If you contest the DMV's decision, your sanction will be stayed pending the outcome of the hearing; however, if the DMV finds that public health, safety, or welfare requires emergency action, your license may be suspended pending the hearing proceedings. Someone from the Administrative Law Court will notify you of the time and date of the administrative hearing at which you can present your case. Once the case has been heard, the Administrative Law Court will send you and the DMV Dealer License Unit written notification of the outcome. The notification will include the following:

- A statement of the time, place, and nature of the hearing.
- A statement of the legal authority and jurisdiction under which a hearing is to be held.
- A reference to the particular section of the statutes and rules involved.
- A short and plain statement concerning the basis of the matter.

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### **Depositions**

During the procedures, you or any party involved may request that depositions be taken from witnesses. These depositions will be taken in the same manner as those taken in civil lawsuits and the same rules apply. The opposing party will be notified of the deposition, and the deposition will be transcribed and certified. Unless precluded by law, informal depositions may be made in any contested case by stipulation, settlement, consent order, or default.

### **Subpoenas**

The Administrative Law Court may issue subpoenas for the attendance and testimony of witnesses. These witnesses may be chosen to produce and examine books, papers, and records. If subpoenaed, these persons are subject to punishment for contempt of court if they fail to appear to give testimony or produce the required books, papers or records. Such subpoenas may be issued to the sheriff of a county in the form of a warrant requiring the arrest of a person who does not appear at a hearing.

### **Evidence and Arguments**

All parties involved in a hearing will be given the opportunity to respond and present evidence and arguments regarding the issues involved. All findings of fact will be based exclusively on the evidence presented and on matters officially noticed. Records will be kept in all contested cases and shall include the following:

- All pleadings, motions, intermediate rulings, and depositions.
- Evidence received or considered.
- A statement of matters officially noticed.
- Questions and offers of proof, objections, and rulings.
- Proposed findings and exceptions.
- Any decision, opinion or report by the officer presiding at the hearing.
- Oral proceedings shall be transcribed at the request of any party at the expense of the party requesting the transcript. All hearings are tape recorded, and any party may have a court reporter present at their own expense.

Evidence presented in hearings is subject to the same rules as those in a court of law. These rules include the following:

- All irrelevant, immaterial or repetitious evidence will be excluded.
- Objections to evidence offered will be noted in the records.
- Documentary evidence may be received in the form of copies or excerpts if the original document is not readily available. Parties will be given an opportunity to compare the copies with the original upon request.
- Any party may conduct cross examination.
- Notice may be taken of judicial facts. In addition, notice may be taken of generally recognized technical or scientific facts within the DMV's specialized knowledge.

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**Decisions**

Final decisions in contested cases will be issued in writing or stated in the records of the case. Findings of facts will be accompanied by a concise and explicit statement of the underlying facts supporting the findings. In some cases, the decision will include a ruling on each proposed finding. The parties involved will be notified either personally or by mail of any decision or order.

Unless required by law, members or employees of the presiding agency assigned to render a decision or make findings in a case will not communicate, directly or indirectly, with any person or party involved in the case. The only exception is when all parties are present.

**Penalty**

Any person violating the provisions of the law regarding communication between Department employees assigned to render decisions and parties involved in a case is guilty of a misdemeanor and may be fined up to \$250 or imprisoned for six (6) months.

**Right to Appeal**

If the Division of Motor Vehicle Hearings upholds the DMV's determination, and the dealer or wholesaler may have exhausted all administrative appeals to obtain or retain a license and still be denied, suspended, or revoked. If the dealer or wholesaler still does not agree with the ruling, s/he has the right to appeal to a court of competent jurisdiction (circuit court) within 30 days of the ruling from the administrative hearings office.

The dealer or wholesaler may also obtain a review of any final judgment of the circuit court with the South Carolina Supreme Court. The appeal will be taken as in other civil cases.

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# SECTIONS OF LAW REGULATING S.C. DEALERS

If you wish to review the laws as they are written, you may do so by visiting [www.scdmvonline.com](http://www.scdmvonline.com) and clicking on "Links," followed by "S.C. Code of Laws" under the "State Links" heading.

1. Section 56-15-10 through 56-15-350, of the S.C. Code of Laws provides for the regulation and license of vehicle dealers and wholesalers.
2. Section 56-3-2320 of the S.C. Code of Laws provides for the issue and use of dealer and wholesaler plates.
3. Sections 56-16-10 through 56-16-210 of the S.C. Code of Laws provide for the regulation of motorcycle manufacturers, distributors, dealers and wholesalers.
4. Sections 56-15-510 through 56-15-600 of the S.C. Code of Laws provide for the regulation and license of wholesale motor vehicle auctions.
5. Section 56-3-2350 of the S.C. Code of Laws provides for the regulation and license of motor vehicle transporters.
6. Sections 56-10-10 through 56-10-20 of the S.C. Code of Laws provide for requirements for garage liability insurance.
7. Section 56-3-210 of the S.C. Code of Laws provides for regulations for the issuance of temporary tags.
8. Section 31-17-510 of the S.C. Code of Laws provides for the regulation and license of travel trailer dealers.

As a dealer or wholesaler, you should be aware of the laws and requirements affecting you, your manufacturer or distributor and your customers. These laws are meant to protect all parties involved in a motor vehicle transaction.

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# NOTES

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# SECTION VI

## FORMS

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# COMMONLY USED DMV FORMS

Each required form serves a specific purpose for DMV and state records. If forms are not completed correctly, the paperwork for your transaction will be returned to you.

This section specifies the documents required to process title and registration transactions. (All dealer titling transaction packages must be signed in at a DMV branch office for completion. A branch office will not process more than three (3) title applications per visit per day.)

Commonly used forms that are covered in this section include the following:

- DMV Form 400, "Application for Certificate of Title and Registration for Motor Vehicle or Manufactured Home/Mobile Home"
- MCO, "Manufacturer's Certificate of Origin" or MSO (Manufacturer's Statement of Origin"
- OOS Title, "Out-of-State Title"
- South Carolina Title
- Property Tax Offset Form (Affidavit & Notification of Sale of Motor Vehicle)
- DMV Form 4031, "Bill of Sale"
- DMV Form 452, "Lost/Stolen or Destroyed License Plate Report Replacement Application"
- DMV Form 4057, "Application for Name and/or Address Change, Date of Birth and/or Social Security Correction, or Special Mailing"

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## Form 400 – Application for Certificate of Title and Registration

DMV Form 400 is an application that must be completed by the registrant to process name transfer from one owner to another.

**Steps for completing Form 400.** Make sure you use a paperclip to attach all documents to the back of the application. Do NOT staple. Identify the transaction by checking the appropriate box in the top section of the form.

### **Section 1 – Vehicle Information**

- **Vehicle Identification Number** – Enter the complete VIN or serial number of the vehicle, which must match the titling documents.
- **Make** – Always use the manufacturer's name (example: Ford, Chevrolet, etc.)
- **Year Make** – Enter the year the vehicle was manufactured, which appears on the titling documents.
- **Body Style** – Enter the body style of the vehicle being registered. (Example: 2dr, 4dr, wgn, etc.)
- **Model** – List the model name (example: Escort, Impala, etc.).
- **Empty Weight** – Enter the vehicle's weight when applicable.
- **GVW** – Enter the total weight of vehicle and payload or the combined weight of tractor-trailer and payload when applicable. (NOTE: This information is required for trucks.)

### **Section 2 – Odometer Mileage**

Enter the odometer mileage of the vehicle being registered. If DMV Form 400 is used to apply for a duplicate title, the CSR will assist you with the mileage. Do not enter tenths of miles.

### **Section 3 – Owner Information** (For a leased vehicle, complete Section 4 section.)

**Owner's Complete Legal Name** – Enter the name of the applicant to whom the vehicle is to be titled. The name should match the name found on the driver's license.

- Customer Number, Driver's License Number, Social Security Number or Federal Employer Identification Number (FEIN)
- Date of Birth

**Co-Owner's Complete Legal Name** – Enter the name of the applicant to whom the vehicle is to be titled. The name should match the name found on the driver's license.

- **Joint Shared** – If shared ownership, specify relationship by checking "and" or "or." (NOTE: "And" means both signatures are required when conducting transactions. "Or" means only one signature is required when conducting transactions.)
- Customer Number, Driver's License Number, Social Security Number or FEIN
- Date of Birth

**Residence Street Address** – Enter the complete address of the owner as a street, route or rural box number. A post office box number is not acceptable in this field and can be entered only in the mailing address field. This must be a South Carolina address.

**Mailing Address** – Where mail is received. A post office box number can be used here.

**Address Where Vehicle is Housed** – This is the address that will be used for property taxes. (Example: Customer lives in Lexington County, but vehicle is housed in Pickens County where child attends school. Pickens County would be the housed address.)

**Daytime Telephone Number** – This information is optional.

**Temporary Address** – This is an address that will be used only for a limited time.

- Expiration Date is required if a Temporary Address is entered.

000394

#### **Section 4 -- Leasing Information**

**Leasing Company Name** - Owner of the vehicle (Example: GMC Leasing)

- Phone Number – This information is optional.
- Contact Person – This information is optional.
- Customer Number

**Address** – Enter the complete address of the owner. (NOTE: It can be an out-of-state of address.)

**Name of Lessee** – Person leasing the vehicle

- Driver's License Number, Social Security Number or FEIN of person leasing the vehicle
- Date of Birth of person leasing vehicle

**Residence Street Address** – The complete address of the person leasing the vehicle as a street, route, or rural box number. A post office box number is not acceptable in this field and can be entered only in the mailing address field. This must be a South Carolina address.

**Mailing Address** – Where mail is received. A post office box number can be used here.

**Address Where Vehicle is Housed** – This is the address that will be used for property taxes. (Example: Customer lives in Lexington County, but vehicle is housed in Pickens County where child attends school.)

#### **Section 5 -- Lien Information**

The lien information on DMV Form 400 must agree with the titling documents.

**Customer Number or FEIN of lien holder**

- Lien Holder Name (First Lien) – This information is required.
- Date of Lien – This information is required.
- Contact Person – This information is optional.
- Telephone Number – This information is optional.

**Mailing Address** - Where mail is received. A post office box number can be used here.

**Customer Number or FEIN**

- Lien Holder Name (Second Lien) – This information is required.
- Date of Lien – This information is required.
- Contact Person – This information is optional.
- Telephone Number – This information is optional.

**Mailing Address** – Where mail is received. A post office box number can be used here.

**Section 6 -- Satisfaction of Lien** will be completed by the lien holder only if the lien has been satisfied and DMV Form 400 is for a duplicate title.

**Satisfaction of First Lien**

- Date of lien satisfaction – This information is required.
- Name of Lien Holder – This information is required.
- Certified By signature of authorized agent – This information is required.
- Title of authorized agent – This information is required.

**Satisfaction of Second Lien**

- Date of lien satisfaction – This information is required.
- Name of Lien Holder – This information is required.
- Certified By signature of authorized agent – This information is required.
- Title of authorized agent – This information is required.

#### **Section 7 -- Sales Tax Exemption**

Check the appropriate box that applies for casual sales tax exemption.

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**Section 8 – Additional Information**

**Date of Purchase**

- Date first operated in South Carolina
- Energy Efficient Manufactured/Mobile Home

**New or Used**

- Prior Title Number – Enter the title number of the title being surrendered; if vehicle is new, write MCO in this field.
- Prior Title State – Enter the name of the state where the vehicle was previously registered and titled.

**The Vehicle Described on this Application Is – For Salvage Use Only**

**The Vehicle Sustained the Following Damage – For Salvage Use Only**

**Agency Reference Number – If Applicable**

**Salvage Percentage – For Salvage Use Only**

**Calculate the Salvage Percentage – For Salvage Use Only**

**Section 9 – Seller Information**

Enter the seller's name (dealer information when applicable):

- South Carolina Dealer/Wholesaler Number
- South Carolina Sales Tax Number
- Sales Price of the vehicle
- Address – Enter the complete address of the seller.

**Section 10 – Insurance Certification**

Enter the name of the liability insurance company if applicant is titling and registering the vehicle. (NOTE: It is imperative that the correct insurance information be listed. Incorrect information may result in the suspension of the owner's driver license and license plate.)

**Section 11 – Gift of Life Trust Fund**

Indicates whether a Gift of Life donation was given and the contribution amount.

**Section 12 – Signature of Owner**

Ensure that the owner(s) has/have signed and dated DMV Form 400. This information is required.

**THIS SECTION FOR DMV/DEALER USE ONLY** – This section is to be completed in its entirety by a DMV employee.

000308

## **Form 452 – Lost/Stolen or Destroyed License Plate Report Replacement Application**

The Lost/Stolen or Destroyed License Plate Report Replacement Application is used to report that a plate was lost, stolen, or destroyed. This application must be completed before a replacement plate is issued to a customer.

### **Steps for Completing DMV Form 452**

1. License Plate Number – That you are reporting missing (if applicable)
  - State – Enter SC
  - Year of Expiration
2. Name and Address of Registered Owner (that appears on Certificate of Title)
  - Name of registered owner
  - Street Address (residence address)
  - City in which owner resides
  - State where vehicle is registered
  - Home Telephone Number of registered owner
  - Work Telephone Number of registered owner
3. I certify that the plate listed above was – You must indicate whether it was lost, stolen or destroyed:

Date of Loss – Date first noticed missing (lost, stolen, or destroyed)

City in which the plate/decal was lost, stolen, or destroyed

State in which the plate/decal was lost, stolen, or destroyed

Circle the one that applies – “I do” or I “do not” wish to replace at this time

Owner's Signature – Registered owner's signature if he or she is the person making the report

Signature of Person Making Report – Signature of person making the report if not the registered owner

Print Name and Address of Person Making Report – The person making the report if different from the registered owner

### **Insurance Certification**

Name of Insurance Company – You must list the name of insurance company if replacing plate/decal. Insurance information must be accurate. Do not guess.

Signature of Owner – Registered owner must sign the insurance section.

### **FOR DMV USE ONLY**

This section is to be completed by a DMV employee only.

000307

## **Form 4057 – Application for Name and/or Address Change, Date of Birth Correction, or Special Mailing**

The Application for Name and/or Address Change, Date of Birth Correction, or Special Mailing will be used by the dealer to make an address correction **only**. The customer must complete this application. Any other change will have to be done in person at a local SCDMV branch office. (NOTE: The address on DMV Form 400 must match the address on file with the DMV. If the address does not match DMV files, DMV Form 4057 must be completed and signed by the customer or the titling application will be denied or returned by the DMV branch office for necessary corrections. The address on file with DMV should be the same as the address on the customer's driver's license.)

It is the responsibility of the clerk to verify that each section is completed when the application returns.

## **Property Tax Odometer (PTO) Form – Affidavit & Notification of Sale of Motor Vehicle**

A PTO is a form used by the dealership to waive the property taxes for 120 days when a customer purchases a vehicle. This form is similar to a Bill of Sale. (NOTE: The pink copy of the PTO will be delivered to the local SCDMV branch office by the dealership. The branch office will distribute to the appropriate county.)

## **Form 4031 – Bill of Sale**

A South Carolina Bill of Sale is required if the current Certificate of Title was issued before June 1989. The form documents the sale price of the vehicle, odometer information, and the seller and buyer information. Dealers also use DMV Form 4031 or a Property Tax Odometer (PTO) Form to document the transfer of a vehicle from one dealership to another dealership. The form may be used for that purpose until the vehicle is transferred to an individual who is not a dealer. This form will not be accepted by the DMV if you erase or "white out" any portion of the form.

000008

# BUYERS GUIDE

**IMPORTANT:** Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE

MODEL

YEAR

VIN NUMBER

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

## AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

## WARRANTY

FULL

LIMITED WARRANTY. The dealer will pay \_\_\_\_\_ % of the labor and \_\_\_\_\_ % of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you additional rights.

SYSTEMS COVERED:

DURATION:

\_\_\_\_\_  
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SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

**PRE PURCHASE INSPECTION:** ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

Re-order from: Elaine Nixon · P.O. Box 547, Laurens, SC 29360 · (864) 964-5523

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000333

CERTIFICATE OF ORIGIN FOR A VEHICLE



DATE: JANUARY 25 2007

UNIT NO: 0808983

VEHICLE IDENTIFICATION NUMBER: 1FMDU7K1E070808983

YEAR: 2007

MAKE: FORD

DESCRIPTION: 14N EXPLORER XLT 4X4 ABS

WEIGHT: 4682 LBS

WHEELS: 37 40 26190 LBS

DRIVE: FWD

NOMINAL TONNAGE: 1/2

The undersigned certifies that the above information is true and correct and that the vehicle described herein is the property of the Ford Motor Company or its authorized agent.

NAME OF DISTRIBUTOR/DEALER, ETC: P. O. NUMBER 18090877

Santa Monica Ford/Hertz Corpor  
14501 Hertz Quad Spgs Pl Attn  
Oklahoma City OK 73134

MEMO DATA (NOT A LIEN)

FINANCE SOURCE: 000001

Ford Motor Credit Co  
P. O. Box 1732  
Dearborn MI 48121

SIGNATURE OF AUTHORIZED REPRESENTATIVE: DEARBORN, MICHIGAN







# South Carolina Department of Motor Vehicles

## APPLICATION FOR A DEALER OR WHOLESALER LICENSE

DLA-1

(Rev. 7/06)

**NOTE: Form must be completed in its entirety. If space provided is insufficient, please reply on a separate sheet of paper and attach as part of the application. Submit original bond and power of attorney with application.**

Check One:  Renewal  First Time Application  Change of Name, Address or Category  
*(NOTE: All Changes must include a rider from your surety company indicating change being made.)*

Wholesale Only  Travel Trailer Only  Motorcycle Only  Dealer (Retail/Wholesale)  Wholesale Auction

I (we) hereby apply for license to engage in the **PRINCIPAL BUSINESS** of selling or dealing in motor vehicles within the State of South Carolina.

Name of Dealership				DEPARTMENT USE ONLY			
Street Address for Dealership							
City	State	Zip Code	County	License Year _____	Date of Issue _____	Specialist's Code _____	
Telephone Number (____) _____				Fee Schedule			
Special Mailing Address and E-Mail Address				____ Dealer/Wholesaler License Fee \$50.00			
Check Only One: <input type="checkbox"/> Franchised <input type="checkbox"/> Non-Franchised				____ Demonstration Plate @ \$20.00 per plate			
If franchised, list Market(s) of Vehicles				____ Total Dealer License Number _____			
_____				Demonstration Plates Assigned:			
_____				No. _____ No. _____			
_____				No. _____ No. _____			
_____				No. _____ No. _____			
_____				Check One Statement:			
_____				____ Information below same as on computer file.			
_____				____ Changes made to information below.			

Yes  No 1. Do you have a surety bond in effect? Name and address of surety company \_\_\_\_\_

Surety Bond Number \_\_\_\_\_ Effective Date \_\_\_\_\_ to \_\_\_\_\_

Name of principal \_\_\_\_\_

Name of liability insurance company \_\_\_\_\_

Policy Number \_\_\_\_\_ Effective Date \_\_\_\_\_ to \_\_\_\_\_

Name of Policyholder \_\_\_\_\_

Name of agent/agency \_\_\_\_\_ Phone Number \_\_\_\_\_

Yes  No 2. Was the Business a licensed dealer/wholesaler during previous year?

If yes, list license number \_\_\_\_\_

Indicate number of demonstration plates assigned \_\_\_\_\_

Average number of employees during previous year \_\_\_\_\_

Number of motor vehicles PURCHASED during the previous year \_\_\_\_\_

Number of motor vehicles SOLD during the previous year \_\_\_\_\_

Number of travel trailers PURCHASED during the previous year \_\_\_\_\_

Number of travel trailers SOLD during the previous year \_\_\_\_\_

Number of motorcycles PURCHASED during the previous year \_\_\_\_\_

Number of motorcycles SOLD during the previous year \_\_\_\_\_

**For First Time Dealers or Dealers licensed less than one calendar year:**

I hereby estimate that I will sell approximately \_\_\_\_\_ motor vehicles during the upcoming year. I understand that the number of license plates may be increased or decreased according to actual sales.

000402

3. Are there any records for each vehicle transaction indicated in question two (2) which reflect the following:
- Yes  No A. Dates of purchase and sale
  - Yes  No B. Vehicle Identification Number
  - Yes  No C. Name and address of seller, purchaser, and copy of odometer statement from seller to dealer/wholesaler and from dealer/wholesaler to purchaser. If no, explain on a separate sheet of paper
- Yes  No 4. Sales Tax number assigned by S.C. Department of Revenue \_\_\_\_\_  
Have monthly sales tax reports been filed with the S.C. Department of Revenue?
- Yes  No 5. Do you sell motor vehicles on credit?  
 Yes  No If Yes, have you filed any credit notifications or maximum rate documents with the Department of Consumer Affairs?
- Yes  No 6. Do you have a Dealer's Manual? (DMV Specialist's Code \_\_\_\_\_)
- Yes  No 7. Is your business financially backed by another person or business? If yes, give details: \_\_\_\_\_
- Yes  No 8. Does your business financially back any other dealer or wholesaler? If yes, list name and address of business \_\_\_\_\_
- Yes  No 9. Has the applicant, owner, sales personnel or agent been licensed as a motor vehicle dealer? If yes, answer the following on a separate sheet of paper: name of business, address, and the dates the business was in operation. Also indicate whether any claims or charges of fraudulent or deceptive trade practices or odometer rollbacks were brought against these individuals or entities.
- Yes  No 10. Has the owner, applicant, sales personnel or agent ever been convicted of any offense involving any motor title or registration, auto theft, or odometer rollbacks? If yes, give details, name and address of court, date of convictions, offense convicted of and punishment imposed on a separate sheet of paper.
- Yes  No 11. Has the owner, applicant, sales personnel or agent allowed the use of demonstration plates to operate wrecker in use by the business or to operate vehicle owned by the business that are leased or rented by the public? If yes, give details on a separate sheet of paper.
- Yes  No 12. Has the license or demonstration plates of your business or any employee of your business ever been suspended or revoked or subject to suspension revocation? If yes, give details on a separate sheet of paper.
13. List complete name (do not use initials), address and driver's license number of the actual owner of the business. (Any person who has at least 10% ownership in the business): \_\_\_\_\_
14. List name, address and driver's license number of principal sales manager of your business: \_\_\_\_\_
15. List name, address and driver's license number of employees/agents of your business: \_\_\_\_\_

Under penalties of perjury, I declare that I am the owner, partner or corporate officer of the business named on this application and that all of the information is true and correct. I further understand that false responses to these questions may result in denial, suspension or revocation of the motor vehicle license being sought and may subject me to prosecution for perjury and other criminal offenses. I have freely and knowingly executed the formalities of an oath in this affirmation and I hereby certify that I am authorized to apply for the license and to supply the information on behalf of the applicant.

\_\_\_\_\_  
Print full name of person signing below

\_\_\_\_\_  
Signature

Mail to:  
South Carolina Department of Motor Vehicles  
Dealer Licensing & Audit Unit  
P.O. Box 1498  
Blythewood, South Carolina 29016-0023

VISIT OUR WEBSITE AT [www.scdmvonline.com](http://www.scdmvonline.com)

000408



## South Carolina Department of Motor Vehicles Requirements for Obtaining a Motor Vehicle Dealer or Wholesaler License

DLA-1a (IS)  
(Rev. 8/06)

Any Motor vehicle dealer or wholesaler applying for the first time will be required to be inspected prior to being issued a license. For the purpose of determining which dealers need to be inspected, the following guidelines will be used:

- a) Any dealer or wholesaler who is applying for the first time.
- b) Any dealer or wholesaler who is reapplying after having been closed for a year or having a license that has been expired more than ninety (90) days.
- c) Any wholesaler changing from a wholesale to a retail dealer or visa versa.
- d) Any dealer or wholesaler moving to a new location.
- e) Any dealer or wholesaler changing ownership of a location.
- f) Any dealer or wholesaler changing the name of the business.

In order to qualify as a Motor Vehicle Dealer, you must meet the following criteria:

1. "Motor Vehicle Dealers" must maintain a bona fide place of business consisting of a permanent structure containing at least 96 square feet of floor space, occupied by the applicant and easily accessible to the public. A bona fide place of business does not mean a residence, tent, temporary stand or other temporary quarters. The selling or exchanging of motor vehicles must be the principal business conducted from the location.
2. Place of business must display a permanent sign with letters at least six (6) inches in height, clearly readable from the nearest avenue of traffic. The sign must clearly identify the licensed business. The dealer's place of business must have a reasonable area or lot to properly display motor vehicles.
3. Must obtain liability insurance covering vehicles offered for sale. Demonstration plates will not be issued unless proof of liability insurance coverage is furnished.
4. Effective December 1, 2006 all dealers or wholesalers applying for an original dealer or wholesaler license must furnish a surety bond in the amount of \$30,000.00, along with its Power of Attorney. An existing dealer or wholesaler must also obtain a new \$30,000 surety bond or obtain a rider which increases your current bond to \$30,000, along with its Power of Attorney. **Note, the current \$15,000 surety bond requirement did not increase for the following dealer or wholesaler license groups, Travel Trailer, Motorcycle and Wholesale Auto Auctions.**
5. Must keep complete records of each transaction for a period of not less than five years from the date of the transaction. Records must be available for Department inspection upon demand during normal business hours.
6. Sales tax must be collected on any sale by a retail dealer. A sales tax number must be obtained from the South Carolina Department of Revenue, Tax Division. Applications for Title, Forms 400, must be completed reflecting the Dealer License Number, Sales Tax Number, and Dealers Signature.

In addition to the above requirements, an applicant for a non-franchise dealer license must attend an eight-hour pre-licensing course prior to being issued a dealer license. A copy of the certificate of completion of the course must accompany this application. You may contact the Dealer Licensing and Audit Unit at (803) 896-2611 for provider information or you may visit our website at [www.scdmvonline.com](http://www.scdmvonline.com). This requirement does not apply to non-franchised dealers owned and operated by a franchised automobile dealer, a non-franchised automobile dealer whose primary business is salvage or non-franchised dealers whose primary business objective and substantial business activity is the rental of motor vehicles.

A Motor Vehicle "Wholesaler" must meet all the requirements above except for items 1 and 2. A "Wholesaler" is not required to maintain a permanent place of business or display a sign. Wholesalers are not permitted to sell vehicles to individuals. They are licensed to sell to other licensed dealers only.

A Dealer or Wholesaler License applies to only one place of business of the applicant and is not transferable to another person or place of business.

For first time applications as defined by the guidelines indicated above, submit a completed and signed Form DLA- 1, *Application for a Motor Vehicle License* and DLA-1 B, *Surety Bond* along with its Power of Attorney, to the following address: Department of Motor Vehicles, Dealer Licensing and Audit Unit, PO Box 1498, Blythewood, South Carolina 29016-0023 No fees will be submitted at this time, Telephone Number: (803) 896-2611

Upon approval or disapproval of the application, you will be notified accordingly of the additional steps necessary.

For renewal of a Motor Vehicle License, submit the following to your local Department of Motor Vehicles Branch Office:

- Form DLA-1, Application for Motor Vehicle License, must be completed in its entirety and signed,
- Form DLA-1C, Certification of Vehicles Sold during the previous dealer license year,
- Fees are as follows:

- Dealer or Wholesaler License \$50.00
- Demonstration Plates \$20.00 each

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**South Carolina Department of Motor Vehicles**  
**Motor Vehicle Dealer and Wholesaler Surety Bond**

DLA-1b  
(Rev. 9/06)

Dealer Number: \_\_\_\_\_

Please read instructions on second page before executing bond.

Bond Number: \_\_\_\_\_ Effective Date: \_\_\_\_\_ Time: \_\_\_\_\_  AM  PM

KNOW ALL MEN BY THESE PRESENTS: that we \_\_\_\_\_  
 (Firm Name as Licensed)

Doing business at \_\_\_\_\_

As Principal and \_\_\_\_\_ as Surety

are duly authorized to do business within the State of South Carolina, are held and firmly bound unto the people of the State of South Carolina to indemnify any owner of a motor vehicle, or his legal representative, who may be aggrieved by any fraud, fraudulent representation or violation by said Principal, salesmen, or representatives acting for such Principal within the scope of employment of such salesmen or representatives, of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, in the amount of:

**(CHECK ONE)**

- Thirty Thousand Dollars (\$30,000) - All dealers and/or wholesalers not specifically listed in the next category,
- Fifteen Thousand Dollars (\$15,000) - Wholesale Auto Auction, Travel Trailer and/or Motorcycle Dealers or Wholesalers,

lawful money of the United States of America, for which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, administrators, successors, and assigns, firmly by these presents.

WHEREAS, the above bounden Principal desires that a motor vehicle dealer's or wholesaler's license be issued and thereafter reissued from time to time by South Carolina Department of Motor Vehicles;

WHEREAS, this bond executed by the said Principal and Surety is filed with the South Carolina Department of Motor Vehicles, to enable said Principal to obtain a license from the Department under the provisions of that law.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall well and truly observe and strictly and faithfully comply with the aforesaid requirements of law and shall save and keep harmless any owner of a motor vehicle or his legal representation made to him by such Principal, such Principal's salesmen or representatives acting for the Principal or within the scope of the employment of such salesmen or representatives, or from any loss or damage suffered by reason of the violation such Principal or any such salesmen or representatives of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, then this obligation shall be null and void; otherwise it shall remain in full force and effect. It is understood that the injured party need not obtain a judgment against the Principal before making claim against the Surety on this bond.

This bond shall not automatically expire with the license for which it is initially issued, but shall continue indefinitely, from license year to license year, upon timely payment of the premium thereon. Before this bond may be cancelled, a thirty (30) day written notice must be given to the Department of Motor Vehicles. Such cancellation does not affect any liability incurred or accrued prior to cancellation.

\_\_\_\_\_  
 (Principal)

\_\_\_\_\_  
 (Surety)

By: \_\_\_\_\_  
 (Title)

By: \_\_\_\_\_  
 (Title)

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**South Carolina Department of Motor Vehicles  
Motor Vehicle Dealer's and Wholesaler's  
Surety Bond Instructions**

DLA-1b (IS)  
(Rev. 9/06)

1. Every applicant for a motor vehicle dealer's and wholesaler's license must furnish the original Surety Bond for the amount required and Power of Attorney on a form to be prescribed by the Executive Director of the Department of Motor Vehicles. The purpose of the bond is to provide indemnity for loss or damage caused an individual due to fraud or fraudulent representation in relation to a sale or transfer of a motor vehicle by a licensed dealer, wholesaler or their employees.

Surety Bond Amount	Which Dealers and Wholesalers must furnish a Surety Bond for this Amount
Thirty Thousand Dollars (\$30,000)	All dealers and/or wholesalers not specifically listed in the next category.
Fifteen Thousand Dollars (\$15,000)	Wholesale Auto Auction, Travel Trailer and/or Motorcycle Dealers or Wholesalers.

2. The Executive Director of the Department of Motor Vehicles has prescribed a standard form of bond for motor vehicle dealers - Motor Vehicle Dealer and Wholesaler Surety Bond (Form DLA-1B), which is set forth on the reverse side hereof.
3. This bond must be executed by the applicant, as principal, and by a corporate surety company authorized to do business in this State, as surety, and given to the Department before the application can be acted upon.
4. This bond must be signed by either the owner, partner or corporate officer of the dealership (Principal) and an agent from your surety company.
5. The bond must be effective prior to or at the time of the granting of a license.
6. If the bonding company has changed, please submit a new original bond and Power of Attorney at the time of renewal.
7. If, during the license year, there is any change in a principal's name, address or ownership then an endorsement from the surety agent or a new bond will be required along with a new application for Dealer/Wholesaler License.

000400

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# South Carolina Department of Motor Vehicles

DLA-3  
(Rev. 2/04)

## APPLICATION FOR LICENSE AS MOTOR VEHICLE TRANSPORTER

<b>DMV USE ONLY</b>	<b>Transporter Plates Assigned</b>		
Date of Issue _____	No. _____	No. _____	No. _____
Office Number and Specialist's Code _____	No. _____	No. _____	No. _____

I am applying for this license to engage in the business of limited operation of motor vehicles to facilitate the manufacture or constructions of cabs or bodies or the foreclosure or repossession of such motor vehicles, pursuant to the provisions of Section 56-3-2350, 1976 Code of Laws, as and if amended.

Name of Business _____	<b>FEE SCHEDULE</b>  19 _____ Transporter License Fee \$50.00  _____ Transporter Plate(s) @ \$10.00 per plate  Total _____  Transporter Permit No. _____
Street Address (business location) _____	
Mailing Address (if different from location) _____	
Telephone Number of Business _____	
Indicate principal nature of business, i.e. whether construction of cabs or bodies or foreclosure or repossession of vehicles: _____ _____	

Name of Liability Insurance Company \_\_\_\_\_

Policy Number \_\_\_\_\_ Effective Dates: \_\_\_\_\_ to \_\_\_\_\_

Name of Policyholder: \_\_\_\_\_

Name of Agency/Agent \_\_\_\_\_

Is the location address above a  commercial establishment or a  residence? (check one)

Was the business a licensed transporter during 19 \_\_\_\_\_?  Yes  No If yes, give permit no. \_\_\_\_\_

If the answer to the above question is yes, indicate number of transporter license plates issued to business for 19 \_\_\_\_\_: \_\_\_\_\_

Number of employees on payroll: \_\_\_\_\_

How many transporter license plates are you applying for with this application? \_\_\_\_\_

Is this business financially backed by another individual, dealer or company? \_\_\_\_\_

If the answer is yes, please give details: \_\_\_\_\_

(continued on reverse side)

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Does transporter financially back any licensed motor vehicle dealer or transporter? If yes, give name of the dealer, the ownership and the address: \_\_\_\_\_

List the names and address of the actual owners of the applicant's business: (Any person who has at least 10% ownership in the business): \_\_\_\_\_

Has this business or any of its owners, sales personnel, or agents had any claims or official charges made against it for unfair deceptive trade practices? If yes, give details: \_\_\_\_\_

Has the applicant, owners, or agents been licensed in any other state as a motor vehicle transporter? \_\_\_\_\_ If so, give the name of the business, address, the dates the business was in operations, and indicate whether any claims or charges of unfair or deceptive trade practices were brought against these individuals or entities. \_\_\_\_\_

Has the owner, applicant, or agent ever been convicted of any offense involving any motor vehicle registration or auto theft? \_\_\_\_\_ If yes, give details: \_\_\_\_\_

Has the transporter license or transporter plates of this business (or any official or employee of this business) ever been suspended or revoked or subject to suspension or revocation? \_\_\_\_\_ If the answer is yes, please give details: \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_

I certify that I am the owner, partner or corporate officer of the business named on this application and that all of the above information is true and correct. I further understand that false responses to these questions may result in denial, suspension, or revocation of the motor vehicle transporter license being sought and may subject me to prosecution for perjury and other criminal offenses. I further certify that I am authorized to apply for the license and to supply the information on behalf of the applicant.

\_\_\_\_\_  
Signature of Applicant

#### CERTIFICATION OF INSPECTION

This is to certify that I, the undersigned, a duly appointed agent of the South Carolina Department of Motor Vehicles, have reviewed this application and have made a personal investigation of the facilities and location as described hereon and in my opinion the said individual(s) or corporation maintain an established place of business of construction cabs or bodies or forclosing or reposessing vehicles as set forth in Section 56-3-2350 of the 1976 Code of Laws.

\_\_\_\_\_  
Agent's Signature

NOTE: This application, upon completion, must be reviewed and signed by an authorized agent of the South Carolina Department of Motor Vehicles prior to applying for a Transporter License. If space provided for answers is insufficient, please reply on a separate sheet of paper and attach as part of the application.

003233





South Carolina Department of Motor Vehicles

MV-38  
(Rev. 6/04)

- MOTOR VEHICLE DEMONSTRATION CERTIFICATE (EXPIRES IN 7 DAYS)
- TRUCK DEMONSTRATION CERTIFICATE (EXPIRES IN 3 DAYS)  
(16,000 GVW OR GREATER)

Dealership Name

Dealer License Number

Dealer Plate Number

Complete Name of Prospective Purchaser

Beginning Date

Ending Date

Signature of Authorized Dealer

000411

AFFIDAVIT & NOTIFICATION OF  
SALE OF MOTOR VEHICLE  
(Entire Form Must Be Typed or Printed)

1779175

Personally appeared before me \_\_\_\_\_  
(Seller) (Dealer Retail Tax #)

\_\_\_\_\_  
(Address)

who being duly sworn, deposes and says that on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

he sold the following motor vehicle: Make \_\_\_\_\_ Model \_\_\_\_\_

Year \_\_\_\_\_ Identification (Serial) No. \_\_\_\_\_

License No. \_\_\_\_\_ to \_\_\_\_\_  
(Buyer)

\_\_\_\_\_  
(Street) (City) (County) (State) (Zip)

Special Mailing Address

Deponent further states that there are no liens or encumbrances on the said vehicle except as listed below:

Lienholder \_\_\_\_\_ Amount \_\_\_\_\_

Address \_\_\_\_\_ Date \_\_\_\_\_

I certify that the odometer now reads \_\_\_\_\_ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

(1) I hereby certify that to the best of my knowledge, the odometer reading reflects the amount of mileage in excess of its mechanical limits.

(2) I hereby certify that the odometer reading is NOT the actual mileage. WARNING-ODOMETER DISCREPANCY

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

\_\_\_\_\_  
(Signature of Seller)

\_\_\_\_\_  
(Print Seller's Name)

\_\_\_\_\_  
(Signature of Buyer)

\_\_\_\_\_  
(Print Buyer's Name)

Property Tax Section Check One:  _____ Purchase License Plate D.L. Number _____ License Plate Issued _____ _____ Transfer License Plate  Signature of Buyer/If purchasing plates
--

WHITE COPY - TO HIGHWAY DEPARTMENT WITH TITLE AND LICENSING APPLICATION, YELLOW COPY - FOR DEALER'S FILE,  
PINK COPY - TO HIGHWAY DEPARTMENT IF NEW TAGS ARE TO BE OBTAINED. GOLDENROD COPY - TO BUYER.



# SCDMV

## Application for Certificate of Title and Registration for Motor Vehicle or Manufactured Home/Mobile Home Form 400 (Rev. 10/05)

For more information, visit our website at [www.scdmvonline.com](http://www.scdmvonline.com) or call our Customer Call Center at (803)896-5000.

Check the box next to the type of transaction you need. Please enclose the required documents and fees with your completed and signed application. For expedited services (within 3 business days) include an additional \$20.00 fee. Please print or type in black ink only. **DO NOT SEND CASH.**

<input type="checkbox"/> <b>NEW TITLE &amp; REGISTRATION</b> 1) Manufacturer Statement of Origin (MSO) or Title 2) Paid Property Tax Receipt 3) \$15.00 title fee and regular registration fee 4) Sales Tax (5% of selling price or \$300.00 max.) 5) Insurance Information	<input type="checkbox"/> <b>TITLE AND PLATE TRANSFER</b> 1) Manufacturer Statement of Origin (MSO) or Title 2) Last Previous Tag # 3) Previous registration in owner's name 4) \$15.00 title + \$10.00 transfer fee 5) Sales Tax (5% of selling price or \$300.00 max.) 6) Insurance Information	<input type="checkbox"/> <b>MOBILE OR MANUFACTURED HOME</b> 1) Manufacturer Statement of Origin (MSO) or Title 2) Consumer Insulation Report required for \$300.00 sales tax cap, if mobile home is energy efficient. 3) \$15.00 title fee	<input type="checkbox"/> <b>TITLE ONLY</b> 1) Manufacturer Statement of Origin (MSO) or Title 2) \$15.00 title fee 3) Sales Tax (5% of selling price or \$300.00 max.)  <input type="checkbox"/> <b>DUPLICATE TITLE</b> 1) Lost Stolen or Destroyed Title 2) \$15.00 title fee	<input type="checkbox"/> <b>LEASED VEHICLE</b> 1) Do not complete Section 3. Complete Section 4 and all other applicable sections.  <b>MAIL YOUR APPLICATION TO:</b> SCDMV P.O. Box 1498 Bluffview, SC 29016-0024
--	--	---	---	---

### SECTION 1 - VEHICLE INFORMATION

VEHICLE IDENTIFICATION NUMBER	MAKE	YEAR MAKE	BODY STYLE	MODIF.	EMPTY WEIGHT	GWW
-------------------------------	------	-----------	------------	--------	--------------	-----

### SECTION 2 - ODOMETER MILEAGE

FEDERAL AND STATE LAW REQUIRES THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

I STATE THAT THE ODOMETER NOW READS \_\_\_\_\_ (NO TENTHS) AND TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED ABOVE UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED:

**STOP** DO NOT CHECK ONE OF THE FOLLOWING UNLESS IT APPLIES.

EXEMPT

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.

I CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE, WARNING ODOMETER DISCREPANCY.

### SECTION 3 - OWNER INFORMATION Your complete legal name must be used on all title and registration documents.

OWNER COMPLETE LEGAL NAME (LAST, FIRST, MIDDLE)	CUSTOMER NO., DRIVER LICENSE NO., SOC. SEC. OR FEIN NO.	DATE OF BIRTH
CO-OWNER COMPLETE LEGAL NAME (LAST, FIRST, MIDDLE)	SHARED OWNERSHIP <input type="checkbox"/> AND <input type="checkbox"/> OR	CUSTOMER NO., DRIVER LICENSE NO., SOC. SEC. OR FEIN NO.
RESIDENCE STREET ADDRESS (APT. NO. IF APPLICABLE)	CITY	STATE ZIP CODE COUNTY
MAILING ADDRESS (IF DIFFERENT FROM ABOVE)	CITY	STATE ZIP CODE COUNTY
ADDRESS WHERE VEHICLE IS HOUSED (IF DIFFERENT FROM ABOVE)	CITY	STATE ZIP CODE COUNTY
DAYTIME TELEPHONE NUMBER	TEMPORARY ADDRESS (IF APPLICABLE)	EXPIRATION OF TEMPORARY ADDRESS

### SECTION 4 - LEASING INFORMATION Complete only for a leased vehicle.

LEASING COMPANY NAME	PHONE NO.	CONTACT PERSON	CUSTOMER NO.
ADDRESS	CITY	STATE	ZIP CODE
NAME OF LEASEE (PERSON LEASING VEHICLE)	DRIVER LICENSE NO., SOC. SEC. NO. OR FEIN NO.	DATE OF BIRTH	
RESIDENCE STREET ADDRESS (APT. NO. IF APPLICABLE)	CITY	STATE ZIP CODE COUNTY	
MAILING ADDRESS (IF DIFFERENT FROM ABOVE)	CITY	STATE ZIP CODE COUNTY	
ADDRESS WHERE VEHICLE IS HOUSED (IF DIFFERENT FROM ABOVE)	CITY	STATE ZIP CODE COUNTY	

### SECTION 5 - LIEN INFORMATION

CUSTOMER NO. OR FEIN NO.	LIENHOLDER NAME (FIRST LIEN)	DATE OF LIEN	CONTACT PERSON	TELEPHONE NUMBER
MAILING ADDRESS	CITY	STATE	ZIP CODE	
CUSTOMER NO. OR FEIN NO.	LIENHOLDER NAME (SECOND LIEN)	DATE OF LIEN	CONTACT PERSON	TELEPHONE NUMBER
MAILING ADDRESS	CITY	STATE	ZIP CODE	

**SECTION 6 - SATISFACTION OF LIEN**

**SATISFACTION OF FIRST LIEN**  
THIS IS TO CERTIFY THAT THE LIEN AGAINST THE VEHICLE HAS BEEN FULLY SATISFIED ON:  
DATE \_\_\_\_\_  
NAME OF LIEN HOLDER \_\_\_\_\_  
CERTIFIED BY \_\_\_\_\_  
TITLE \_\_\_\_\_

**SATISFACTION OF SECOND LIEN**  
THIS IS TO CERTIFY THAT THE LIEN AGAINST THE VEHICLE HAS BEEN FULLY SATISFIED ON:  
DATE \_\_\_\_\_  
NAME OF LIEN HOLDER \_\_\_\_\_  
CERTIFIED BY \_\_\_\_\_  
TITLE \_\_\_\_\_

**SECTION 7 - SALES TAX EXEMPTION** Complete this section if you are entitled to a sales tax exemption.

VEHICLE PURCHASED FROM INDIVIDUALS AND TITLED IN SOUTH CAROLINA ARE SUBJECT TO SALES TAX UNLESS EXEMPT. THE TAX IS 5% OF THE SALES PRICE UP TO A MAXIMUM OF \$300.00. (MOBILE HOMES ARE CALCULATED DIFFERENTLY.)

THE VEHICLE WAS TRANSFERRED FROM:  MY PARENT  MY SPOUSE  MY CHILD  MY BROTHER/SISTER  MY GRANDPARENT  MY GRANDCHILD

THE VEHICLE WAS TRANSFERRED TO ME AS:  LEGAL HEIR  BENEFICIARY  DISTRIBUTEE

I AM NON-RESIDENT MILITARY PERSONNEL  THE VEHICLE WAS A BONAFIDE GIFT

**SECTION 8 - ADDITIONAL INFORMATION**

DATE OF PURCHASE \_\_\_\_\_ DATE FIRST OPERATED IN S.C. \_\_\_\_\_ ENERGY EFFICIENT MANUFACTURED/MOBILE HOME?  YES  NO

NEW OR USED? \_\_\_\_\_ PRIOR TITLE NUMBER \_\_\_\_\_ PRIOR TITLE STATE \_\_\_\_\_

THE VEHICLE DESCRIBED ON THIS APPLICATION IS:  REBUILDABLE  NON-REBUILDABLE

THE VEHICLE SUSTAINED THE FOLLOWING DAMAGE:  COLLISION  FIRE  WATER  STOLEN (RECOVERED)  STOLEN (UNRECOVERED)

AGENCY REFERENCE NUMBER \_\_\_\_\_ SALVAGE % \_\_\_\_\_ Calculate the Salvage Percentage: Predamaged Value \_\_\_\_\_ Estimate for Repairs \_\_\_\_\_ Percentage \_\_\_\_\_

**SECTION 9 - SELLER INFORMATION**

SELLER OR DEALER NAME \_\_\_\_\_ SC DEALER/WHOLESALE NUMBER \_\_\_\_\_ SC SALES TAX NUMBER \_\_\_\_\_ SALES PRICE \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

**SECTION 10 - INSURANCE CERTIFICATION**

A VEHICLE MUST BE INSURED WITH LIABILITY INSURANCE COVERAGE WHEN IT IS REGISTERED AND IT MUST REMAIN INSURED WHILE REGISTERED, WHETHER OR NOT IT IS OPERATED, OR THE UNINSURED MOTORIST FEE MUST BE PAID. PENALTIES ARE SEVERE FOR VIOLATION OF THIS REQUIREMENT.

UNDER PENALTIES OF PERJURY, I (WE) DECLARE THAT THIS VEHICLE IS **INSURED** BY A LIABILITY INSURANCE POLICY ISSUED THROUGH AN INSURANCE COMPANY LICENSED TO DO BUSINESS IN SOUTH CAROLINA AND IT WILL REMAIN INSURED THROUGHOUT THE REGISTRATION PERIOD.

NAME OF INSURANCE COMPANY \_\_\_\_\_

**SECTION 11 - GIFT OF LIFE TRUST FUND**

DO YOU WISH TO DONATE AN ADDITIONAL \$1.00 OR MORE TO THE GIFT OF LIFE TRUST FUND?  YES  NO AMOUNT \$ \_\_\_\_\_

**SECTION 12 - SIGNATURE OF OWNER**

UNDER PENALTIES OF PERJURY, I DECLARE THAT I AM THE OWNER OF THIS VEHICLE AND REQUEST THAT A SOUTH CAROLINA CERTIFICATE OF TITLE AND/OR REGISTRATION BE ISSUED. I FURTHER CERTIFY THAT THE INFORMATION ON THIS APPLICATION IS CORRECT TO THE BEST OF MY KNOWLEDGE, THE VEHICLE IS SUBJECT TO THE LIENS NAMED AND NO OTHERS.

SIGNATURE OF OWNER (S) - MUST BE SIGNED IN INK BY OWNER OR AUTHORIZED AGENT (ATTACH POWER OF ATTORNEY IF APPLICABLE) \_\_\_\_\_ DATE \_\_\_\_\_

**DISCLOSURE STATEMENT**

56-3-240 (SOUTH CAROLINA CODE OF LAWS) - THE DEPARTMENT SHALL OBTAIN THE FEDERAL EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER WHEN A VEHICLE IS REGISTERED WITH A GROSS VEHICLE WEIGHT OF MORE THAN 26,000 POUNDS OR A BUS COMMON CARRIER. THE DRIVER PRIVACY PROTECTION ACT OF 1994 (DPPA), 18 USC SECTION 2721-2725 RESTRICT THE DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN OUR RECORDS.

**PENALTY FEES**

FAILURE TO REGISTER WITHIN 45 DAYS OF THE DATE OF PURCHASE WILL RESULT IN PENALTY FEES IN ADDITION TO REGULAR TITLE AND/OR REGISTRATION FEES. THE LATE PENALTY FEE SCHEDULE IS AS FOLLOWS:  
46 - 60 DAYS LATE - \$10.00      61 - 75 DAYS LATE - \$25.00      76 - 135 DAYS LATE - \$50.00      OVER 135 DAYS LATE - \$75.00

**THIS SECTION FOR DMV USE ONLY**

STAMP VEHICLE BRANDS		
RATED BY	TRANSACTION FEES	
OFFICE OFFICE NUMBER	EXPEDITED FEE	WEIGHT INCREASE
PLATE NUMBER	LICENSE FEE	TRANSFER
EXPIRATION DATE	UNINSURED FEE	TITLE
PLATE CLASS	USE OR SALES TAX	GIFT OF LIFE FUND
SUSPENSE REASON	PENALTY	TOTAL

000414 480



**South Carolina Department of Motor Vehicles  
Application for a Temporary Motor Home or  
Travel Trailer Dealer License**

417-C  
(Rev. 10/05)

**The fee for a Temporary Vehicle Dealer License is \$20.00.**

Name of Dealership		
Address		
City	State	Zip Code
Dealer License Number		Name of Owner
Type of Event	Date of Event (MM-dd-yy)	
Location of Event		
Dates License Required (MM-dd-yy)	FROM: - -	TO: - -

I, \_\_\_\_\_ hereby certify that I am a Motor Vehicle Dealer licensed to do business in South Carolina. I understand that this license is valid only for the sale of travel trailers and motor homes as specified in Sections 56-15-10, 56-15-310, and 31-17-520 of the South Carolina Code of Laws, as amended.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Full Name of Applicant

**INSTRUCTIONS**

- This application must be mailed to the South Carolina Department of Motor Vehicles, Dealer Licensing Unit, PO Box 1498, Blythewood, SC 29206-0023 or submitted to a branch office of the Department of Motor Vehicles.
- A temporary dealers license may be issued to a licensed motor vehicle dealer who sells or offers for sale motor homes and travel trailers as provided in Sections 56-15-10, 56-15-310, and 31-17-520 of the South Carolina Code of Laws, as amended.
- The dealer license issued pursuant to this application applies to only one dealer operating in a temporary location and is not transferable to any other dealer or locations. The temporary license may only be issued for "fairs, recreational or sports shows, vacation shows, and other similar events or shows.
- A temporary dealer license is valid for a period not to exceed ten (10) consecutive days and must be prominently displayed at the temporary place of business.
- No dealer may purchase more than six (6) temporary licenses in any one calendar year.
- The fee for each temporary license issued is twenty dollars (\$20.00).
- Any person failing to secure a temporary license is guilty of a misdemeanor and, upon conviction, must be punished in the same manner as he would be punished for failure to secure his dealer's license.
- This temporary license may not be construed as allowing the sale of any type of motor vehicle other than motor homes and travel trailers at authorized temporary locations.

**Please visit us on the web at [scdmvonline.com](http://scdmvonline.com)**

6-21

000415



# South Carolina Department of Motor Vehicles

## 30-DAY TEMPORARY PLATE REGISTRATION

433  
Rev: 02/07

Pursuant to Section 56-3-2600 and 56-3-2900 of the 1976 Code of Laws of South Carolina as amended.

Plate No. Issued  <b>TP-</b>	<b>FEE PAID \$20.00</b>	Date Plate Expires
------------------------------------	-------------------------	--------------------

Purchaser's Name \_\_\_\_\_ Date of Issue \_\_\_\_\_

Street	City	State	Zip Code
Year	Make	Vehicle Identification Number	

Dealer from whom vehicle and plate were purchased.

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Print Name of Dealer \_\_\_\_\_ Signature of Dealer \_\_\_\_\_

**See conditions below.**

The South Carolina Department of Motor Vehicles, upon request shall provide temporary license plates and registrations designed by the department to nonresidents of South Carolina, licensed motor vehicle dealers and to manufacturers in South Carolina who produce trailers or semi-trailers that apply for such plates and cards.

Temporary license plate shall be on the vehicle for which issued and shall not be transferred, loaned, or assigned to any other person or vehicle.

Temporary license plate and registration shall be valid for thirty days from the date of issuance.

Permit good only for empty weight if issued on truck or property carrying vehicle.

Liability insurance coverage must be in force for at least the minimum amounts required by South Carolina law.

The registration should be carried in the vehicle described while in operation.

Date of issue, make, identification number and expiration date on actual temporary plate, must be written in permanent black ink or black ink covered with transparent tape.

**Motor Vehicle Dealers Only-** Dealers, subject to the limitations and conditions hereafter set forth, may issue such temporary license plates to owners of vehicles which are to be permanently licensed in a state other than South Carolina.

**Manufacturers of Trailers or Semi-Trailers in South Carolina only-** A manufacturer may issue a temporary plate to a trailer or semi-trailer that is being moved from the manufacturer to the dealer's or purchaser's place of business.

Department of Motor Vehicles copy of registration must be mailed to the South Carolina Department of Motor Vehicles, P.O. Box 1498, Blythewood, South Carolina 29016-0036 on the same day issued.

WHITE COPY - APPLICANT  
6-22

000416

30 DAY PLATE  
SOUTH CAROLINA  
**TP-00000**

ISSUED	MAKE	IDENTIFICATION	EXPIRES

Form 933-A (Rev. 7/99)

6-23

000017



**South Carolina Department of Motor Vehicles**  
**APPLICATION FOR TEMPORARY PERMIT AND PLATES**

FORM #33-B  
(Rev. 02/07)

Date \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_ Temporary Permits and Plates (10 Permits to a book)  
 ( Number of Books)

Name of Dealer/Applicant \_\_\_\_\_ County \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Dealer Number \_\_\_\_\_ Sales Tax Number \_\_\_\_\_

Enclosed you will find ( ) or ( ) Made payable to the South Carolina  
 Cash Money Order or Check

Department of Motor Vehicles

\_\_\_\_\_  
 Signature of Dealer or Agent

Fee for each set of Permits and Plates is \$20.00.

**THIS SPACE FOR DEPARTMENT USE ONLY**

Number of Permits/Books Issued \_\_\_\_\_

Beginning Number \_\_\_\_\_ Ending Number \_\_\_\_\_ Total \_\_\_\_\_

Number of Temporary Plates \_\_\_\_\_

Beginning Number \_\_\_\_\_ Ending Number \_\_\_\_\_ Total \_\_\_\_\_

Total Permits Issued \_\_\_\_\_ Date of Issue \_\_\_\_\_

Issued By \_\_\_\_\_ Office Number and Code \_\_\_\_\_

Amount of Fees Collected \_\_\_\_\_

This will certify I have personally received all permits and plates listed in good condition.

Received By \_\_\_\_\_

WHITE-APPLICANT

YELLOW-DMV FILE

PINK-ACCOUNTING

GOLD-BRANCH OFFICE



# South Carolina Department of Motor Vehicles

**BILL OF SALE**  
(Must Be Typed or Printed in Black Ink)

<b>FOR DEPARTMENT USE ONLY</b>	
Check One:	
<input type="checkbox"/>	Purchase License Plate
<input type="checkbox"/>	Transfer License Plate _____

\_\_\_\_\_  
Seller

Street \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

state that on the \_\_\_\_\_ day of \_\_\_\_\_ Yr. \_\_\_\_\_ the following vehicle:

MAKE \_\_\_\_\_ MODEL \_\_\_\_\_ BODY TYPE \_\_\_\_\_ YEAR \_\_\_\_\_

VEHICLE IDENTIFICATION NO. \_\_\_\_\_ LICENSE NO. \_\_\_\_\_

was sold to \_\_\_\_\_  
Buyer

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**NOT FOR OFFICIAL USE**

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:  
\_\_\_\_\_  
(List here any mortgages, liens, or encumbrances)

Sale price of vehicle	_____	\$	_____
Less trade-in	_____	\$	_____
Taxable Total	_____	\$	_____

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads \_\_\_\_\_ (no tenths) miles and to the best of my knowledge that it reflects the **ACTUAL MILEAGE** of the vehicle described herein, **UNLESS** one of the following statements is checked.

- STOP!** DO NOT check one of the following unless it applies.
- \_\_\_\_\_ 1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
- \_\_\_\_\_ 2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Signature(s) of Buyer(s) _____	Date _____	Signature(s) of Seller(s) _____	Date _____
Hand Print Name(s) of Buyer(s) _____		Hand Print Name(s) of Seller(s) _____	

**Return to: South Carolina Department of Motor Vehicles**  
**P.O. Box 1498**  
**Columbia, S.C. 29216-0024**

**ANY ALTERATION OR ERASURE VOIDS THIS DOCUMENT.**  
**ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT.**

000413



# South Carolina Department of Motor Vehicles

452  
(Rev. 10-05)

## LOST/STOLEN OR DESTROYED LICENSE PLATE REPORT REPLACEMENT APPLICATION

### INSTRUCTIONS

This form must be completed by the requested owner, or his agent to replace a lost, stolen, or destroyed license plate and presented at any DMV Branch office, or mailed to the address listed below.

Department of Motor Vehicles  
DMV Customer Service Unit  
Attention: Mail-In Registration  
P.O. Box 1498  
Blythewood, South Carolina 29016-0019

1. License Plate No. \_\_\_\_\_ State \_\_\_\_\_ Year \_\_\_\_\_

2. Name and Address of Registered Owner:

Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_

Telephone Number (Home) \_\_\_\_\_ (Work) \_\_\_\_\_

3. I certify that the plate listed above was: (circle one) Lost Stolen Destroyed

Date of Loss \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

I do/do not (circle one) wish for another plate at this time. If the plate above is recovered, I will notify the nearest DMV Branch Office immediately. If receiving another plate, complete Insurance Certification (below).

Owner's Signature \_\_\_\_\_

Signature of Person Making Report \_\_\_\_\_

Print Name and Address of Person Making Report (if different from registered owner)  
\_\_\_\_\_

### INSURANCE CERTIFICATION

Under penalties of perjury, I declare this vehicle is insured with the company named below, and I will maintain liability insurance throughout the registration period.

Name of Insurance Company \_\_\_\_\_

Signature of Owner \_\_\_\_\_ Date \_\_\_\_\_

### FOR DMV USE ONLY

VIN NUMBER \_\_\_\_\_

NEW LICENSE PLATE NUMBER \_\_\_\_\_

BRANCH OFFICE SUBMITTING \_\_\_\_\_

SPECIALIST SIGNATURE \_\_\_\_\_

DATE OF REPORT \_\_\_\_\_

TIME OF REPORT \_\_\_\_\_

PLEASE PROVIDE CUSTOMER WITH A PHOTOCOPY OF THIS DOCUMENT.



# South Carolina Department of Motor Vehicles

## Application for Name and/or Address Change, Date of Birth and/or Social Security Correction, or Special Mailing

4057  
(Rev. 4/06)

SC Code of Laws § 56-1-230 Notification of change of address or name: Whenever any person after applying for or receiving a driver's license shall move permanently from the address named in such application or in the license issued to him or when the name of a licensee is changed by marriage or otherwise, such person shall within ten days thereafter notify the Department in writing of his old and new address or of such former and new name and of the number of any license then held by him.

Please check and complete all sections that apply in black ink.

### MY NAME ON RECORD WITH THE DEPARTMENT OF MOTOR VEHICLES IS:

Name:	Last	First	Middle	Suffix	Date of Birth:
-------	------	-------	--------	--------	----------------

### TITLE AND REGISTRATION INFORMATION

Customer No.	Vehicle Identification No.
License Plate No.	Make of Vehicle

### DRIVER RECORD INFORMATION

Customer No.	Driver's License No.
Identification Card No.	Beginner Permit No.

**NAME CHANGE** (A court order or marriage license must accompany this form.)

I hereby request that my name in the SCDMV records be changed to:

Last	First	Middle	Suffix
------	-------	--------	--------

**RESIDENCE ADDRESS CHANGE** - Address where you reside or the address where the company is located. Cannot be a PO Box.  
My residence address is:

**HOUSED ADDRESS CHANGE** - Address used for a vehicle that is primarily at an address different from the residence/company address. Example: company vehicle. My housed address is:

Street
City State Zip Code County

Street
City State Zip Code County

**MAILING ADDRESS CHANGE** - Address where you want SCDMV to send you mail.  
My mailing address is:

**TEMPORARY ADDRESS CHANGE** - Address where you will receive your mail on a temporary basis.  
My temporary address is: 

Temp. Expiration Date
-----------------------

Street
City State Zip Code County

Street
City State Zip Code County

### DATE OF BIRTH CORRECTION

Date of Birth Shown on Department Records			Correct Date of Birth		
Month	Day	Year	Month	Day	Year

Supporting documentation is required. Please see form MV-93 and MV-94 for a list of acceptable documents to justify the correction.

### SOCIAL SECURITY NUMBER CORRECTION

Social Security Number Shown on Department Records			Correct Social Security Number		

Supporting documentation is required. Please see form MV-93 and MV-94 for a list of acceptable documents to justify the correction.

**MOTOR VOTER SECTION** **NOTE:** State Election Commission requires the customer to be physically present in the DMV office to update information with the Election Commission. Customers not transacting business in a DMV office should contact their County Board of Motor Registration to update voter registration information.

Yes, I wish to update my address with the Election Commission (customer must be physically present in DMV field office).  
 No, I do not wish to update my address with the Election Commission.

I hereby state that all information given and statements made herein are true and correct and these changes are being made without fraudulent purpose or intent.

Applicant's Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature of DMV Customer Service Representative \_\_\_\_\_ Branch Office Name and Number \_\_\_\_\_

NOTE: Applications, with all needed supporting documents, may be mailed to: **S.C. Department of Motor Vehicles  
Alternative Media  
PO Box 1498  
Blythewood, SC 29016-0035**

000421

# **SECTION VII**

## **GLOSSARY OF TERMS**

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# GLOSSARY OF TERMS

**Dealer or Motor Vehicle Dealer** refers to any person who sells or attempts to affect the sale of any motor vehicle in a calendar year.

**Dealer License** refers to a license issued to individuals authorizing them to sell motor vehicles.

**Distributor** refers to any person who sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives within the state.

**Distributor Branch** refers to a branch office maintained by a distributor who sells or distributes new motor vehicles to motor vehicle dealers.

**Distributor Representative** refers to a representative employed by a distributor branch or distributor.

**Fair Market Value** refers to the total purchase price of a vehicle less the trade-in value.

**Franchise** refers to an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor, or wholesaler grants to a motor vehicle dealer a license to use a trade name, service mark, or related characteristic, and in which there is a community of interest in the marketing of motor vehicles or services related thereto at wholesale, retail, leasing or otherwise.

**Franchisee** refers to a motor vehicle dealer to whom a franchise is offered or granted.

**Franchiser** refers to a manufacturer, distributor, or wholesaler who grants a franchise to a motor vehicle dealer.

**Fraud** refers to a misrepresentation in any manner whether intentionally false or due to gross negligence of a material fact; a promise or representation not made honestly and in good faith; and intentional failure to disclose a material fact.

**Gross Weight** refers to the weight of a vehicle plus the weight of any load thereon.

**Manufacturer** refers to any person engaged in the business of manufacturing or assembling new and unused motor vehicles.

**Moped** refers to every cycle with pedals to permit propulsion by human power and with a motor of not more than 50 cubic centimeters which produces not more than two (2) brake horsepower and which is not capable of propelling the vehicle at a speed in excess of 30 miles per hour on level ground. If an internal combustion engine is used, the moped shall have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

**Motorcycle** refers to a motorized cycle having no more than two (2) permanent functional wheels in contact with the ground or with a detachable side car or trailer and having a saddle for the use of the rider.

**Motor Home** refers to a vehicular unit designed to provide temporary living quarters built into an integral part of or permanently attached to a self-propelled motor vehicle chassis or van which contains permanently installed independent life support systems other than low voltage meeting the American National Standards Institute (ANSI) A 119.2 Standard for Recreational Vehicles and provides at least four of the following facilities: cooking with on-board power source separate from the vehicle engine; a portable water supply system including a faucet, sink, and water tank with an exterior service connection; separate 110-125-volt electric power supply.

**Motor Vehicle** refers to any motor-driven vehicle required to be registered and every vehicle which is self-propelled, except mopeds, and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

**New Motor Vehicle** refers to a motor vehicle which has not been previously sold to any person except a distributor or wholesaler or motor vehicle dealer for resale.

**Non-Resident** refers to any person who is not a resident of this state.

**Odometer** refers to an instrument for measuring and recording the actual distance a vehicle travels while in operation; not any instrument designed to be reset by the operator.

**Odometer Disclosure Statement** refers to a statement certified by the owner of the motor vehicle to the transferee or the DMV indicating the odometer reading of the vehicle.

**Odometer Reading** refers to the actual cumulative distance traveled that is shown on the odometer.

**Owner** refers to a person who holds the legal title of a vehicle.

**Permanently Installed** refers to built into or attached as an integral part of a chassis or van and designed not to be removed except for repair or replacement. A system which is readily removable or held in place by clamps or tie downs is not permanently installed.

**Person** refers to a natural person, corporation, partnership, trust or other entity, and in the case of an entity, it shall include any other entity in which it has a majority interest or effectively controls as well as the individual officers, directors, and other persons in active control or the activities of any such entity.

**Sale** refers to the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation or mortgage in any form whether by transfer in trust or otherwise of any motor vehicle or interest therein or of any franchise related thereto; any option, subscription or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form whether spoken or written, A gift or delivery of any motor vehicle or franchise with respect thereto with, or as a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise.

**Semi Trailer** refers to every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so

constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

**Three-Wheel Vehicle (Trike)** refers to every motor vehicle having no more than three (3) permanent functional wheels in contact with the ground and having a seat or saddle for the use of the operator, but excluding a tractor.

**Total Purchase Price** refers to the price of a motor vehicle, motorcycle, boat, motor or airplane that was agreed upon by the buyer and the seller. This price allows for a trade-in value.

**Trailer** refers to every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

**Travel Trailer** refers "Travel trailer" means every vehicle (except motor homes) designed without motor power towed by a motor vehicle and not measuring more than 8ft. wide or 35ft. long in travel mode, designed to provide temporary living quarters for recreational, camping, and travel use and designed not to require permanent on-site utilities.

**Truck** refers to every motor vehicle designed, used, or maintained primarily for the transportation of property.

**Truck Tractor** refers to every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

**Used Motor Vehicle** refers to a vehicle that was previously titled to another owner one or more times.

**Vehicle** refers to every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

**Wholesaler or Motor Vehicle Wholesaler** refers to any person who sells or attempts to sell used vehicles exclusively to motor vehicle dealers or other wholesalers.

**Wholesale License** refers to a license issued to individuals authorizing them to sell motor vehicles to dealers or other wholesalers.

# NOTES

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**SUPPLEMENTAL GUIDELINES TO SECTION III DEALER AUDITS AND  
INSPECTIONS  
2007 DEALER AND WHOLESALER MANUAL**

**I. PURPOSE:**

The purpose of these guidelines is to provide supplemental instruction and information pertaining to audits of different licensees operating at the same fixed location (building and grounds).

**II MULTIPLE LICENSEES (DIFFERENT BUSINESSES) AT SAME FIXED LOCATION:**

When auditing businesses licensed under Chapter 15 or Title 56 (Retail Motor Vehicle Dealers, Wholesale Motor Vehicle Dealers, and Wholesale Motor Vehicle Auctions) that have an established place of business located in the same fixed location as other businesses the DMV agent will ascertain that the following requirements have been met:

*Physical space requirements*

1. The principal business of the licensee is the selling or exchanging of motor vehicles;
2. All businesses operating from the fixed location must primarily be engaged in the selling, exchanging, leasing, rental or service of motor vehicles;
3. All established places of business located within the same fixed location must be physically separated from each other by interior walls;
4. Each business must maintain a separate business address assigned by USPS and that address must be the same address appearing on the license application and surety bond.
5. Multiple business entities with retail and/or wholesale dealerships and/or wholesale motor vehicle auction operations sharing separate established places of business at the same fixed location must physically separate and clearly mark each licensee's inventory location so that buyers and DMV agents know which inventory is being offered by which licensee;
6. A separate business entity operating as a wholesaler or wholesale motor vehicle auction sharing a fixed location with a different retail dealer's business operation according to the above requirements must physically separate the wholesale vehicle display area from the retail display area and must restrict access to the wholesale vehicle display area to retail dealers or wholesalers only.

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SUPPLEMENTAL GUIDELINES TO SECTION III DEALER AUDITS AND  
INSPECTIONS  
2007 DEALER AND WHOLESALER MANUAL

**III ADDITIONAL REQUIREMENTS FOR WHOLESALE MOTOR VEHICLE AUCTIONS**

*General Licensing Requirements*

1. The applicant must maintain an established place of business with a separate business address for which the license will be issued; there must be a separate office space in which the records of the licensee are housed, and the actual license is maintained;
2. The applicant must apply for a separate license (\$50 each) for each established place of business; if approved, the license will be issued for, and must be displayed at, that established place of business only. If a company will be conducting auctions from multiple sites, each site must be individually licensed;
3. Each separate location and separate license must maintain its own bond (\$15,000 for each location).
4. The application for any license must include a diagram on regular letter size paper (8 1/2" x 11") that indicates the office area and the vehicle display area and/or lot with dimensions detailing the office space and surface area of the display area.
5. When a transfer of title is made as a result of a transaction at a wholesale motor vehicle auction, the reassignment of title or bill of sale must note the name and address of the wholesale motor vehicle auction. However, the wholesale motor vehicle auction is not deemed to be the owner, seller, transferor, or assignor of title of a motor vehicle by reason of its name appearing on a reassignment of title or bill of sale or by reason of its payment of a guarantee of payment to a seller, receipt of payment from a purchaser, or the reservation of a lien or security interest for the purpose of securing payment from a purchaser.
6. A wholesale motor vehicle auction is not prohibited from buying or selling motor vehicles in its own name. However, in that instance, it shall comply with the provisions of South Carolina law pertaining to reassignment and delivery of title documents and disclosures to wholesale buyers.
7. A motor vehicle retail or wholesale dealer licensed by this or another jurisdiction may purchase or sell motor vehicles at a wholesale motor vehicle auction. A person may purchase or sell motor vehicles at a wholesale motor vehicle auction if required by an agency of government or by law.
8. In addition to retail or wholesale dealers, the following may also sell motor vehicles through a wholesale motor vehicle auction if the motor vehicles are acquired as an incident to regular business:
  - a) manufacturers; marine dealers; motor vehicle rental businesses; motor vehicle lease businesses; recreation vehicle dealers; sellers of motor vehicle fleets; public officers while performing their official duties; receivers; trustees; administrators; executors; guardians; insurance companies; banks; finance companies; other loan agencies or their agents.

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**SUPPLEMENTAL GUIDELINES TO SECTION III DEALER AUDITS AND  
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2007 DEALER AND WHOLESALER MANUAL**

*Record-Keeping Requirements*

1. A wholesale motor vehicle auction shall establish and retain at its primary place of business complete records of each transaction for five years following the date of sale of each motor vehicle.
2. The records must show the name of the most recent owner other than the wholesale motor vehicle auction, the name of the buyer, the vehicle identification number, and the odometer reading on the date which the wholesale motor vehicle auction took possession of the motor vehicle.
3. A wholesale auto auction sharing the same fixed location with a retail dealer must be able to present to the Department's dealer agents the appropriate documents detailing the proper assignment of the vehicle from retail or wholesale dealer selling the vehicle, through the wholesale auction, to the retail or wholesale dealer purchasing the vehicle.
4. The auction must make its records available for audit upon reasonable request; the records must be physically located at the licensed location, or must be accessible electronically from that location.

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Petition # 3

DEALER HISTORY RECORD

Dealer Number: 30643  
Dealer Name: Toyota of Greer

Copy of this record is provided to the  
with the...  
[Signature]

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List in order all past dealer complaints, violations and sanctions within the last 36 months.  
Also list any outstanding violations and indicate pending in the sanction columns.

No.	Complaint Number	Violation	Sanction	Sanction Date	Date Sent to SLED
1	6750	56-15-40(1) Failure to Deliver	Verbal Warning	06-30-09	06-30-09
2	9966	56-15-40(1) Failure to Deliver	4 Points	4-23-12	
3	10437	56-15-40(1) failure to deliver	4 points	10/17/12	
4	14/724	56-15-40(1) failure to deliver	4 points	06/24/14	
5	15/1168	56-15-40(1) failure to deliver	4 points	2/2/16	
6	16/664	56-15-40(1) failure to deliver	4 Points	7/27/16	
7	16/746	56-15-40(1) failure to deliver	4 Points	8/8/2016	
8	Read remarks straight across to make sense.	Dealer not given a 7 day suspension for that the complainant in 15/1168 registration for the vehicle.	the 3 2016 sanctions contributed to the delay Documentation sent to	above because in receiving scanning on	Karl stated the the title and 10/13/16. ZL
9	17/445	56-15-40(1) Failure to Deliver	4 Points	5/25/17	
10					
11					
12					

Dealer Unit Supervisor: Lisa Bird

Date: May 25, 2017