

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 3585

FILED

STATE OF NORTH CAROLINA, *ex rel.*
JOSHUA H. STEIN, Attorney General 2020 MAR 10 P 2:46

Plaintiff,)
WAKE CO., N.C.S.S.)
BY _____)

v.

CONSENT JUDGMENT

NATHANIEL THOMAS BROWN,)
INDIVIDUALLY; SAMUEL ROSS KETNER,)
INDIVIDUALLY; AUTO HOUSE OF)
MOORESVILLE, INC.; and AUTO HOUSE OF)
SALISBURY, INC.,)
Defendants.)

THIS CAUSE came on to be heard and was heard before the undersigned Wake County Superior Court Judge for entry of a Consent Judgment between Plaintiff, State of North Carolina, by and through its Attorney General, and defendants Nathaniel Thomas Brown, Samuel Ross Ketner, Auto House of Mooresville, Inc., and Auto House of Salisbury, Inc., (hereinafter collectively, "Defendants"). The Court finds that the parties have resolved the matters in controversy between them and have agreed to the entry of this Consent Judgment ("Consent Judgment") by the Court without trial or adjudication of any issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

I. FINDINGS OF FACT

1.1 Plaintiff State of North Carolina is acting through its Attorney General, Josh Stein, pursuant to authority granted in Chapters 75 and 114 of the North Carolina General Statutes to protect the consuming public from unlawful business practices.

1.2 At all times relevant to this action, Auto House of Mooresville, Inc. (hereinafter “Defendant Auto House Mooresville”) was a North Carolina corporation with its principal place of business located at 303 West Plaza Drive, Mooresville, North Carolina 28117.

1.3 At all times relevant to this action, Auto House of Salisbury, Inc. (hereinafter “Defendant Auto House Salisbury”) was a North Carolina corporation with its principal place of business located at 428 Jake Alexander Boulevard South, Salisbury, North Carolina 28147.

1.4 Defendant Nathaniel Thomas Brown (hereinafter “Defendant Brown”) is an adult individual and, at all times material and relevant to this action, was an owner and operator of Defendant Auto House Mooresville and Defendant Auto House Salisbury. Defendant Brown is a resident of Mecklenburg County.

1.5 Defendant Samuel Ross Ketner (hereinafter “Defendant Ketner”) is an adult individual and, at all times material and relevant to this action, was an owner and operator of Defendant Auto House Mooresville and Defendant Auto House Salisbury. Defendant Ketner is a resident of Mecklenburg County.

1.6 At all times relevant to this action, Defendant Auto House Mooresville and Defendant Auto House Salisbury were used car dealerships which engaged in trade and commerce within North Carolina through a regular practice of advertising, offering for sale, and selling motor vehicles; selling service contracts for repair of motor vehicles; and arranging financing for buyers of Defendants’ vehicles in North Carolina.

1.7 The State alleges that Defendant Auto House Mooresville and Defendant Auto House Salisbury engaged in trade and commerce affecting consumers within the meaning of N.C. Gen. Stat. § 75-1.1 and that in violation thereof, Defendant engaged in the following deceptive practices:

- a. altered the body, emblems affixed to the body, interior, and/or accessories of vehicles in order to give the false impression that the vehicles were a different trim level of higher value; and
- b. falsely marketed and represented that the altered vehicles were a different trim level of higher value verbally to consumers, in promotional material, and in writing which was displayed on the window of vehicles offered for sale.

1.8 The State further alleges that Defendants engaged in the following deceptive advertising practices, in violation of N.C. Gen. Stat. § 75-1.1:

- a. distributed promotional materials which included unreasonably deceptive terms that represented directly or by implication that the intended recipient had won a specific prize, when the consumer was excluded from receiving the prize by other ambiguous terms within the advertisement;
- b. distributed promotional materials which represented directly or by implication that the intended recipient had a random chance to win a prize which the recipient had no chance of winning, in direct violation of N.C. Gen. Stat. § 75-32;
- c. distributed promotional materials which represented directly or by implication that the intended recipient had a random chance to win one of several prizes when it had already been determined by Defendants which prize the consumer would receive, in direct violation of N.C. Gen. Stat. § 75-33;
- d. distributed promotional materials which represented directly or by implication that the intended recipient had been uniquely selected to claim a prize in connection with the sale of a vehicle when in fact more than ten percent (10%) of recipients of

the mailed advertisements had also been invited to claim a prize, in direct violation of N.C. Gen. Stat. § 75-34; and

- e. distributed promotional materials which used, and even prominently displayed, the terms “Wholesale” although the prices displayed in such advertisements were not established by an independent agency not engaged in the manufacture, distribution, or sale of the advertised vehicles, in violation of N.C. Gen. Stat. § 75-29.

1.9 The State further alleges that Defendants engaged in the following business practices in arranging financing for buyers of Defendants’ vehicles, in violation of N.C. Gen. Stat. § 75-1.1:

- a. altered or falsely reported information and/or documents, which had been provided by the buyer and which were related to the buyer’s ability to repay the loan when submitting credit applications to lenders in order to obtain approval for loans which the lender may not have otherwise approved; and
- b. falsely represented that purchased vehicles were of a different trim level of higher value, in credit applications submitted to lenders, in order to obtain financing for a higher total purchase price.

1.10 The State further alleges that Defendants engaged in the following deceptive practices when selling vehicles with prior damage:

- a. sold vehicles which were five years old or less, with knowledge that such vehicles had been involved in a collision or other occurrence to the extent that the cost of repairing such vehicles (excluding the cost to replace the air bag restraint system) exceeded twenty-five (25%) of the vehicle’s fair market retail value at the time of the collision or other occurrence, but failed to disclose to consumers that such

vehicles had been subjected to such damage, in direct violation of N.C. Gen. Stat. § 20-71.4(a)(1);

- b. sold vehicles which were five years old or less, with knowledge that such vehicles were reconstructed or were salvage vehicles, but failed to disclose to consumers that such vehicles were reconstructed or salvage vehicles, in direct violation of N.C. Gen. Stat. §20-71.4(a)(2); and
- c. presented consumers with an incomplete Carfax report, or other incomplete vehicle history report, which was missing the report's references to prior damage to the vehicle.

1.11 The State further alleges that, in some instances, Defendants sold and collected payment for service contracts for repair of sold vehicles, or financed the cost of the service contract, as a part of the buyer's purchase loan but failed to submit either the service contract or the payment collected for the price of the service contract to the third party administrator, in violation of N.C. Gen. Stat. § 75-1.1.

1.12 Defendants deny all of Plaintiff's allegations in paragraphs 1.7 through 1.11 and specifically deny any violation of law or wrongdoing but, in the interest of compliance and resolution of the matter, desire to resolve this controversy without further proceedings and agree to the entry of this Consent Judgment.

II. CONCLUSIONS OF LAW

2.1 This Court has jurisdiction over the parties and the subject matter of this action.

2.2 Venue is proper in Wake County, North Carolina.

2.3 North Carolina's Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*, governs the alleged business practices of Defendants that gave rise to this controversy.

2.4 The North Carolina Attorney General is the proper party to commence these proceedings under the authority of N.C. Gen. Stat. §§ 75-14 and -15, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of North Carolina.

2.5 This Consent Judgment shall be governed by the laws of the State of North Carolina.

2.6 Entry of this Consent Judgment is just and proper and in the public interest.

2.7 Plaintiff's Complaint states a cause of action against Defendants upon which relief may be granted, and the Court finds good and sufficient cause to adopt this agreement of the parties and these findings of fact and conclusions of law as its determination of their respective rights and obligations and for entry of this Consent Judgment.

2.8 The parties have agreed to resolve their differences and the agreement of the parties is just and reasonable with respect to all parties.

2.9 The Court approves the terms of the parties' agreement and adopts them as its own determination of the parties' respective rights and obligations.

III. PERMANENT INJUNCTIVE RELIEF AND COMPLIANCE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

3.1 Future Conduct. Defendants and their successors, assigns, transferees, officers, agents, servants, employees, salespersons, representatives, attorneys, and any person acting under the actual direction or control of Defendants, are hereby permanently restrained and enjoined from engaging in the motor vehicle dealership business in North Carolina and from participating in any form (including but not limited to ownership, operation, management, or employment) in the day-to-day operations of a motor vehicle dealership in North Carolina.

3.2 Regulation of Other Conduct. Nothing in this Consent Judgment is intended to relieve Defendants of their responsibility to comply with all applicable North Carolina laws.

3.3 Other State Governmental Entities. This Consent Judgment shall not bind any other offices, boards, commissions, or agencies of the State of North Carolina.

3.4 Retention of Jurisdiction. The Court retains jurisdiction over this action to take any further action deemed necessary to enforce this Consent Judgment, including imposition of penalties, and to award the State judgments for any costs, including attorney's fees, it incurs in the event of noncompliance by any of the defendants.

3.5 No Sanction of Business Practices. Defendants shall not represent directly or indirectly or in any way whatsoever that the Court or the North Carolina Attorney General has sanctioned, condoned, or approved any part or aspect of Defendants' business operation.

3.6 Information Obtained By Discovery. Defendants attest that Defendants have submitted in response to Civil Investigative Demands issued by the Attorney General, to the best of their knowledge and based upon Defendants' records, an accurate accounting of Defendants' selling, marketing, and debt collection processes and practices in North Carolina. Defendants attest that they have provided the Attorney General with an accurate list of all consumers who (a) purchased a motor vehicle from Defendants on or after January 1, 2013; (b) were not provided with written disclosure of prior damage to the vehicle before purchasing the vehicle; (c) later discovered such prior damage; (d) submitted a written complaint regarding such undisclosed prior damage to Defendant Auto House Mooresville, Defendant Auto House Salisbury, or the North Carolina Attorney General; and (e) have not entered into a settlement agreement with Defendants resolving Defendants' failure to disclose the prior damage.

3.7 Release of Claims. This Consent Judgment shall fully resolve all legal claims and issues raised in the Complaint against the Defendants for their activities up to the date of this Consent Judgment.

IV. MONETARY RELIEF

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

4.1. Payment. On or before the date this Consent Judgment is entered, Defendants shall pay the sum of One Hundred Sixty Thousand Dollars (\$160,000.00) to the Attorney General to be used for attorney's fees, investigative costs, consumer education, enforcement, and/or other consumer protection or restitution purposes, at the discretion of the Attorney General.

4.2. Method of Payment. Defendant shall pay the above sum to the Attorney General by cashier's check or other certified funds made payable to the North Carolina Department of Justice.

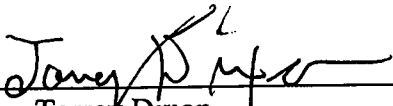
SO ORDERED this the 10 day of MARCH, 2020.



SUPERIOR COURT JUDGE

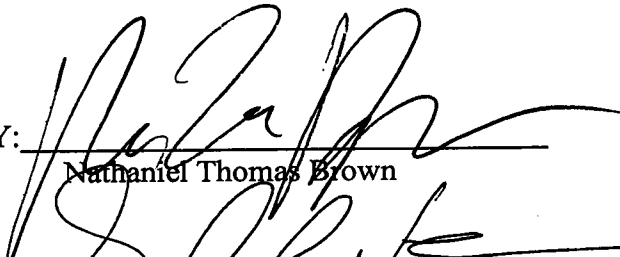
CONSENTED TO:

STATE OF NORTH CAROLINA,
ex rel. JOSHUA H. STEIN
Attorney General

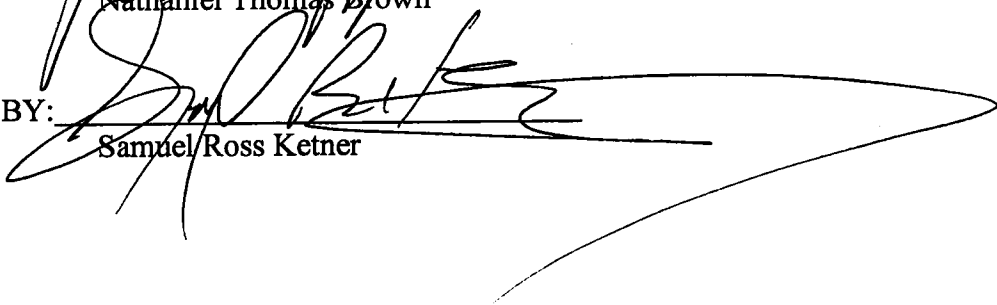
BY: 

Torrey Dixon
Assistant Attorney General

AUTO HOUSE OF MOORESVILLE, INC.
and AUTO HOUSE OF SALISBURY, INC.

BY: 

Nathaniel Thomas Brown

BY: 

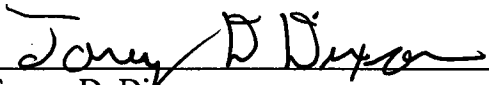
Samuel Ross Ketner

CERTIFICATE OF SERVICE

I hereby certify that on this date I have served the foregoing CONSENT JUDGMENT, by depositing a copy of the same in the U.S. Mail, first-class postage prepaid, and addressed as follows:

James A. Davis, II
Davis & Davis, Attorneys at Law, P.C.
215 North Main Street
Salisbury, NC 28144

This the 10th day of March, 2020.



Torrey D. Dixon
Assistant Attorney General