

IN THE COURT OF COMMON PLEAS OF
DAUPHIN COUNTY, PENNSYLVANIA
CIVIL ACTION

RECEIVED
OFFICE OF
PROTHONOTARY

2019 APR -9 AM 9:00

DAUPHIN COUNTY
PENNA

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

PETITIONER

v.

PAXTON ASSOCIATES, INC. D/B/A
FAULKNER HONDA

RESPONDENT

2019 CV 2658 MD

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, acting by Attorney General Josh Shapiro, through the Bureau of Consumer Protection (hereinafter "Commonwealth" and/or "Petitioner"), which caused an investigation to be made into the business practices of respondent, Paxton Associates, Inc. d/b/a Faulkner Honda (hereinafter "Respondent" and/or "Faulkner Honda"), pursuant to the provisions of the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. §§ 201-1, *et seq.* (hereinafter "Consumer Protection Law") and the *Automotive Industry Trade Practices*, 37 Pa. Code §§ 301.1, *et seq.* (hereinafter "Auto Regs"), and states the following:

PARTIES

WHEREAS, Petitioner is the Commonwealth of Pennsylvania, acting by Attorney General Josh Shapiro, through the Bureau of Consumer Protection with offices located at Strawberry Square, 15th Floor, Harrisburg, PA 17120;

WHEREAS, Respondent is a for-profit Pennsylvania company, with a registered address of 4437 Street Road, Trevose, PA 19053 and its principal place of business located at 2008 Paxton Street, Harrisburg, Pennsylvania 17111;

BACKGROUND

WHEREAS, Respondent has engaged in trade and commerce within the Commonwealth of Pennsylvania by, *inter alia*, selling, advertising, marketing, offering for sale and negotiating the sale of new and used motor vehicles;

WHEREAS, Respondent directed, supervised, controlled, approved, formulated, authorized, ratified, benefited from, and or otherwise participated in the acts and practices hereinafter described;

WHEREAS, the State Board of Vehicle Manufacturers, Dealers and Salespersons (hereinafter "State Board") licenses motor vehicle dealers and salespersons. 63 P.S. §§ 818.1, *et seq.* (hereinafter "Vehicles Act");

WHEREAS, Respondent was issued a Motor Vehicle Dealer License, Number VD027338, which is set to expire on May 31, 2019, in accordance with the Vehicles Act;

WHEREAS, Respondent is a "motor vehicle dealer" which has advertised, sold, offered for sale, and/or negotiated the retail sale of five or more "motor vehicles" in a calendar year, to Pennsylvania consumers, as defined by Section 301.1 of the Auto Regs;

ALLEGED VIOLATIONS

WHEREAS, based upon its investigation, the Commonwealth believes the Respondent has engaged in conduct which violates the Consumer Protection Law and the Auto Regs as more fully set forth below:

1. Respondent advertised, offered, negotiated, leased and sold, *inter alia*, new American Honda Motor Company (hereinafter "Honda") manufactured vehicles.

2. All of the new, Honda vehicles that Respondent advertised, offered, negotiated, leased and sold come with a standard, thirty-six (36) month, thirty-six thousand (36,000) mile Honda manufacturer's warranty (hereinafter "Manufacturer's Warranty");

3. Respondent offered and sold a New Vehicle Coverage Warranty (hereinafter "Faulkner Warranty") for new, Honda vehicles purchased or leased at Respondent's dealerships, commonly referred to as an "upsell," "back end" "add on", or "optional voluntary protection product" for which Respondent received remuneration;

4. Customers paid Respondent additional consideration for the Faulkner Warranty;

5. All of Respondent's new, leased Honda vehicles are, without additional consideration paid beyond the advertised sale price, covered by the existing Manufacturer's Warranty;

6. The Faulkner Warranty is subject to an Administrator Contract which excludes, by its terms, any claims covered by the Manufacturer's Warranty and does not allow Respondent to submit for reimbursement any claim for repairs or expenses also covered by the Manufacturer's Warranty;

7. As a result, for new, Honda vehicles leased for a term of 36 months and 36,000 miles at Respondent's dealership, the Faulkner Warranty, in the Commonwealth's view, failed to provide any meaningful value relative to the consideration paid by the consumer;

8. Respondent marketed, negotiated and sold the Faulkner Warranty to consumers entering thirty-six (36) month, 36,000-mile lease agreements;

9. Respondent advertised, marketed and offered the Faulkner Warranty as having value to the consumer leasing a vehicle for 36 months, 36,000 miles when, in the Commonwealth's view, the Faulkner Warranty failed to provide any meaningful value relative to the consideration paid by the consumer;

10. On occasion, in the Commonwealth's view, Respondent failed to disclose to consumers the de minimis value of the Faulkner Warranty for the short-term lease vehicles already covered by the Manufacturer's Warranty;

11. The aforesaid acts and practices, in the Commonwealth's view, are prohibited by Section 201-3 of the Consumer Protection Law as "unfair methods of competition" and/or "unfair or deceptive acts or practices," as defined by the following subsections of the Consumer Protection Law, 73 P.S. § 201-2(4):

(iii) Causing a likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;

(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have; and

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding;

WHEREAS, the Auto Regs prohibit the making of a representation or statement of a fact in an advertisement or sales presentation if the advertiser or salesperson knows or should know that the representation or statement is false and misleading or if the advertiser or salesperson does not have

sufficient information upon which a reasonable belief in the truth of the representation could be based,
37 Pa. Code § 301.2(6);

WHEREAS, a violation of the Auto Regulations is considered an unfair method of competition and/or an unfair or deceptive act or practice under the Consumer Protection Law. 37 Pa. Code § 301.2;

WHEREAS, pursuant to Section 201-5 of the Consumer Protection Law, this Assurance of Voluntary Compliance (hereinafter "AVC") shall not be considered an admission by Respondent of a violation of the Consumer Protection Law for any purpose. 73 P.S. § 201-5;

WHEREAS, Respondent denies that it has violated the Consumer Protection Law and/or engaged in any unfair or deceptive actions; however, given the risks, uncertainties, burden and expense of litigation, Faulkner Honda has chosen and agreed to enter into this AVC;

WHEREAS, this AVC is accepted by the Commonwealth pursuant to Section 201-5 of the Consumer Protection Law, in lieu of commencing statutory proceedings provided under Sections 201-4 and 201-8 of the Consumer Protection Law and shall not be considered an admission of a violation. 73 P.S. §§ 201-4, 201-5 and 201-8.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, Respondent agrees for itself, its affiliated or related successors and assigns, jointly or individually, directly or indirectly, through any corporate or other business device to the following:

I. The above recitals are incorporated herein as though fully set forth.

II. Injunctive and Affirmative Relief

A. The forgoing recitals are incorporated herein by reference as though fully set forth.

B. Respondent shall comply with any and all provisions of the Consumer Protection Law and any amendments thereto; and, are permanently enjoined from any violation thereof.

C. Respondents shall not, in the future, engage in conduct which violates the Consumer Protection Law, and any future amendments thereto, specifically including, but not limited to:

1. Causing a likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, as prohibited by Section 201-2(4)(iii) of the Consumer Protection Law, 73 P.S. § 201-2(4)(iii);

2. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have, as prohibited by Section 201-2(4)(v) of the Consumer Protection Law, 73 P.S. § 201-2(4)(v); and

3. Engaging in other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, as prohibited by Section 201-2(4)(xxi) of the Consumer Protection Law, 73 P.S. § 201-2(4)(xxi).

D. Respondent shall not, in the future, engage in conduct which violates the Auto Regulations, and any future amendments thereto, and, is permanently enjoined from any violation thereof specifically including, but not limited to: (1) offering or selling, at lease inception, the Faulkner Warranty to any person leasing a vehicle for the term and miles equal to or less than the Manufacturer's Warranty, or (2) offering or selling the Faulkner Warranty, for new or used vehicles, without disclosing to the consumer, in conspicuous, larger font, all capitalized bold type, that the consumer is purchasing a vehicle with an existing warranty and that the Faulkner Warranty

being purchased does not cover claims that are covered by the existing warranty, which is a violation of the Auto Regs, 37 Pa. Code § 301.2(6);

III. Monetary Relief

A. Consistent with the Payment Terms set forth below at Section III(B), Respondents shall be liable for and shall pay to the Commonwealth a total payment in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) (hereinafter "Required Payment"), from which shall be allocated as follows:

1. **Civil Penalties** in the amount of FIVE THOUSAND and 00/100 Dollars (\$5,000.00) shall be distributed to the Commonwealth of Pennsylvania, Department of Treasury; and
2. **Costs of Investigation** in the amount of FIVE THOUSAND and 00/100 Dollars (\$5,000.00) shall be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, to reimburse the costs incurred in pursuing this enforcement action, and shall be deposited in an interest-bearing account from which both principal and interest shall be expended for future public protection and education purposes.

B. Payment Terms - Respondent shall submit, upon their execution, the Required Payment by certified check, cashier's check, or money order, made payable to the Commonwealth of Pennsylvania, Office of Attorney General, and forwarded to Juan P. Sánchez, Bureau of Consumer Protection, 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120.

C. Restitution for New Consumer Complaints. Respondent acknowledges there may be additional consumers who have been harmed by the conduct cited herein and who have not

submitted complaints with the Bureau of Consumer Protection; and, Respondent agrees to pay additional restitution as follows (hereinafter "Additional Restitution"):

1. Respondent shall pay Additional Restitution, consistent with Section 201-4.1 of the Consumer Protection Law, 73 P.S. § 201-4.1, to any consumer who submits a claim or complaint to Respondent or the Commonwealth within ninety (90) days of the filing of this AVC, and:
 - a. who submits a claim or complaint that asserts that he or she was harmed due to the conduct of Respondents as described herein above;
 - b. who provides adequate documents which supports his or her claim or complaint; and
 - c. whose claim is validated by the Commonwealth.
2. Any Additional Restitution request that is postmarked by the ninetieth (90th) day shall be deemed timely. Copies of any and all complaints or requests made directly to Respondent shall be forwarded to the Commonwealth to:

Office of Attorney General
Bureau of Consumer Protection
Juan P. Sanchez
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
3. The Commonwealth will provide Respondent with copies of all claims received;
 - a. Respondent agrees to fully cooperate with the Commonwealth and shall supply the Commonwealth with any and all information and documents requested by the Commonwealth within twenty (20) days of the

request, with regard to any consumer who submits within the aforementioned period;

b. Respondent may supply the Commonwealth with any written response it wishes to make to the specific consumer complaints received;

c. Respondent agrees that Additional Restitution shall be paid to the Commonwealth for consumers who demonstrate to the satisfaction of the Commonwealth that they were harmed by conduct of Respondents which occurred prior to the signing of this AVC and which constituted violations of the law as stated herein above;

d. The determination of whether a consumer shall receive Additional Restitution hereunder, the amount of any such restitution to be paid to such consumer, and the timing and manner of payments, shall be within the sole discretion of the Commonwealth; and

e. On or before one hundred fifty (150) days of the filing of this AVC, Respondent shall provide a written list to the Commonwealth documenting and verifying that any such consumer complaint has received restitution in the appropriate sum.

D. After Respondent has made the Required Payments, Respondent shall no longer have any property right, title, interest, or other legal claim in any funds held in escrow.

IV. Miscellaneous Terms

A. The Court of Common Pleas of Pennsylvania, Dauphin County shall maintain jurisdiction over the subject matter of this AVC and over the Respondent for purpose of enforcement of the terms of this AVC.

B. Nothing contained in this AVC shall be construed to waive or limit any right of action by any consumer, person or entity, or by any local, state, federal or other governmental entity.

C. Time shall be of the essence with regards to Respondent's obligations hereunder.

D. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this AVC, whether required prior to, contemporaneous with or subsequent to the Effective Date, as defined herein.

E. Respondent understands and agrees that if any false statement was made in or related to this AVC, that such statement is made pursuant to and under penalty of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

F. This AVC may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this AVC may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

G. This AVC sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this AVC that are not fully expressed herein or attached hereto. Each party specifically warrants that

this AVC is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

H. Respondent agrees by the signing of this AVC that Respondent shall abide by each of the aforementioned provisions and that the breach of any one of these terms shall be sufficient warrant for the Commonwealth of Pennsylvania to seek penalties provided for under Section 2018(a) of the Consumer Protection Law, 73 P.S. § 201-8(a), and to seek restitution and/or any other equitable relief which the Court deems necessary or proper, up to and including forfeiture of the right to engage in trade or commerce within the Commonwealth of Pennsylvania.

I. Any failure of the Commonwealth to exercise any of its rights under this AVC shall not constitute a waiver of its rights hereunder.

J. The "Filing Date" and "Effective Date" of this AVC shall mean the date that it is filed with the Court.

K. If any clause, provision or section of this AVC shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this AVC and this AVC shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

L. Nothing herein shall preclude Respondent from doing business in the Commonwealth pursuant to any subsequently enacted, promulgated, modified, or interpreted federal or state statute, including modifications to, or interpretations of, existing statutes. In the event that any statute, rule or regulation pertaining to the subject matter of this AVC is subsequently enacted, promulgated, modified or interpreted by a federal or state court, or any federal or state government, or any federal or state agency, or a court of competent jurisdiction holds that such statute, rule or regulation is in

conflict with any provision of this AVC, Respondent's compliance with such statute, rule or regulation and such action shall not constitute a violation of this AVC.

M. Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent's past or current business practices, efforts to improve their practices, or any future practices that Respondent may adopt or consider adopting.

N. The undersigned is authorized to enter into and execute this AVC by and on behalf of Respondent and Respondent has been represented by legal counsel and has been advised by its legal counsel of the meaning and effect of this AVC.

O. Respondent shall not, directly or indirectly, form a separate entity or corporation for the purpose of engaging in acts prohibited by this AVC or for the purpose of circumventing this AVC.

P. Neither Petitioner nor Respondent shall be considered the drafter of this AVC or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this AVC.

WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

SIGNATURES ON SEPARATE PAGE

For the Petitioner:

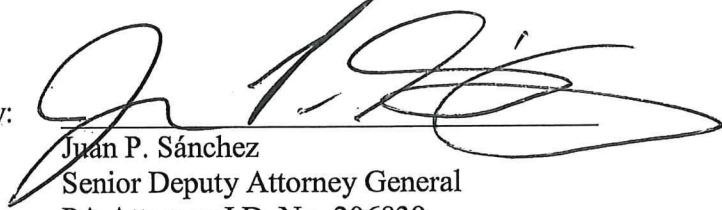
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

Date: _____

4/9/19

By: _____




Juan P. Sánchez
Senior Deputy Attorney General
PA Attorney I.D. No. 206839
Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, PA 17120
Telephone: (717) 787-9707
Facsimile: (717) 705-3795
Email: jpsanchez@attorneygeneral.gov

For the Respondent:

Paxton Associates, Inc. d/b/a Faulkner Honda

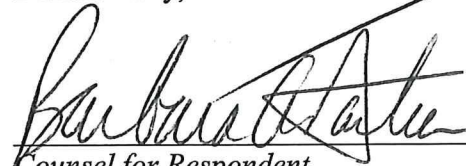
Date: March 25th 2019

By:


Donald Perry, President

Date: 3-26-19

By:


Counsel for Respondent,
Barbara A. Darkes, Esq.
McNees, Wallace & Nurick LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108

PAXTON ASSOCIATES, INC.

**CONSENT IN WRITING IN LIEU OF
SPECIAL MEETING OF BOARD OF DIRECTORS**

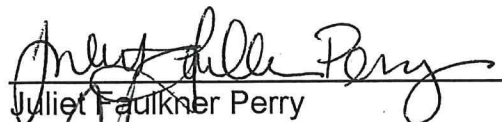
The undersigned, being the Directors of Paxton Associates, Inc., d/b/a Faulkner Honda (the "Corporation"), a Pennsylvania business corporation, do hereby execute this Consent to Action in accordance with, and as permitted by, the Pennsylvania Business Corporation Law of 1988, 15 Pa. C.S. §1727(b), and do hereby waive all requirements of notice of a meeting of the Board of Directors, however arising, and do hereby adopt the following Resolution:

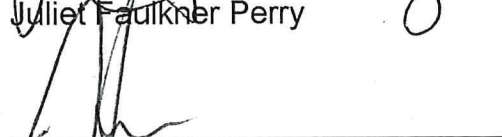
WHEREAS, the Corporation has been presented with and desires to enter into an Assurance of Voluntary Compliance; and

WHEREAS, the Assurance of Voluntary Compliance must be signed by an authorized signatory;

THEREFORE, BE IT RESOLVED, that Donald Perry, President of the Corporation, is hereby authorized to execute the Assurance of Voluntary Compliance on behalf of the Corporation.


Gail Faulkner


Juliet Faulkner Perry


Henry Faulkner IV

Dated: As of March 16, 2019

Juan P. Sanchez
Senior Deputy Attorney General
PA Attorney I.D. No. 206839
Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, PA 17120
Telephone: (717) 787-9707
Facsimile: (717) 705-3795
Email: jpsanchez@attorneygeneral.gov

IN THE COURT OF COMMON PLEAS OF
DAUPHIN COUNTY, PENNSYLVANIA
CIVIL ACTION

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

PETITIONER

v.

PAXTON ASSOCIATES, INC. D/B/A
FAULKNER HONDA

RESPONDENT

Case No.

CERTIFICATE OF SERVICE

Undersigned counsel does hereby certify that a true and correct copy of the foregoing Assurance of Voluntary Compliance was served by means of First Class U.S. Mail, postage prepaid, on the date noted below:

Counsel for Respondent,
Barbara A. Darkes, Esq.
McNees, Wallace & Nurick LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108

Date: _____

4/9/19

By: _____

Juan P. Sánchez
Senior Deputy Attorney General
PA Attorney I.D. No. 206839
Bureau of Consumer Protection