

FILED

APR 27 2001

Division of Consumer Affairs

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ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street, 5th Floor  
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Newark, New Jersey 07101

By: Ginger R. Provost  
Deputy Attorney General  
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STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

IN THE MATTER OF AN INQUIRY BETWEEN :  
MARK S. HERR, DIRECTOR, NEW JERSEY :  
DIVISION OF CONSUMER AFFAIRS, :  
:  
and :  
:  
FOULKE MANAGEMENT CORP., MALL :  
CHEVROLET, CHERRY HILL DODGE, INC., :  
ATLANTIC CHRYSLER-PLYMOUTH, INC., :  
CHERRY HILL SUBARU JEEP KIA, :  
CHERRY HILL MITSUBISHI, MT. EPHRAIM :  
DODGE, and MALL CHRYSLER PLYMOUTH, :  
:  
Respondents. :

Administrative Action

ASSURANCE OF  
VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("AVC") is made and entered into this 18th day of APRIL, 2001, by and between Foulke Management Corp., Mall Chevrolet, Cherry Hill Dodge, Inc., Atlantic Chrysler-Plymouth, Inc., Cherry Hill Kia, Cherry Hill Mitsubishi, Mt. Ephraim Dodge, Mall Chrysler Plymouth, and Cherry Hill Subaru their principals, officers, directors, employees, agents or assigns (collectively, "Dealerships" or "Respondents") and the State of New Jersey, Division of Consumer Affairs ("Division" or "DCA").

This matter was initiated by the Division as an inquiry to determine whether violations of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (the "Act" or "CFA"), the Consumer Protection Leasing Act, N.J.S.A. 56:12-60 et seq. (the "Leasing Act"), and/or the federal odometer disclosure statute, 49 U.S.C.A. § 31502 et seq. (the "Odometer Statute"), as well as all of the regulations promulgated under the aforementioned statutes were committed by or through Foulke Management Corp., Mall Chevrolet, Cherry Hill Dodge, Inc., Atlantic Chrysler-Plymouth, Inc., Cherry Hill Kia, Cherry Hill Mitsubishi, Mt. Ephraim Dodge, Mall Chrysler Plymouth and Cherry Hill Subaru their principals, officers, directors, employees, agents or assigns.

Based upon the information reviewed by DCA, including information provided to it by Respondents, DCA has determined to amicably conclude its inquiry by means of the resolution embodied in this AVC which DCA specifically finds serves the public interest, without making any findings or conducting any further investigation or proceedings. By this resolution, the Respondents do not admit to any violation of the Act, the Leasing Act, or the Odometer Statute and enter into this Agreement solely to conclude the Division's inquiry and to be fully cooperative with the Division toward the mutual end of ensuring the integrity of the process to all New Jersey consumers.

1. Respondents, individually and in concert with, by or through any person or any entity, agree to abide by and not engage in any unfair or deceptive acts or practices in the conduct of their business in the State of New Jersey, and shall comply with such state and federal laws, rules and regulations as now constituted or as may hereafter be amended, which are applicable to all future sales, leasing and repair of new and used motor vehicles by or on behalf of Dealerships, including but not limited to the Act, the Leasing Act and the Odometer Statute.

2. In addition to the requirements of Paragraph 1 above, Dealerships specifically agree to comply with the following business practices:

a. Dealerships will fully and accurately disclose whether a new vehicle had previously been damaged and that substantial repair or body work had been performed on it when such prior repair or body work is known or should have been known by the dealer. For purposes of this provision, substantial repair or body work shall mean repair or body work having a retail value of \$1,000 or more;

b. Dealerships will provide a lease agreement containing all terms of the prospective lease to the consumer at least twenty-four (24) hours prior to the execution of that agreement to allow for a period of review, or will obtain a signed waiver of that condition, after the opportunity for twenty-four hour review is fully explained to the consumer.

c. Dealerships agree to comply with N.J.S.A. 56:12-62, which requires accurate disclosure on the lease of certain features of the vehicle, including, but not limited to, the odometer reading at the beginning of the leased term, an explanation of the prior use of the vehicle if the odometer reads in excess of 1,000 miles, the number of engine cylinders of the vehicle, whether the transmission is automatic or manual, whether the brakes and steering mechanism are power assisted or manual, and whether or not the vehicle is air conditioned.

d. In accordance with N.J.S.A. 56:8-68, Dealerships will disclose, when known prior to sale or lease, the existence and material terms of any transferable written warranty, service contract or repair insurance, whether offered or provided by the

dealer or a third party, and promptly provide copies of the written document evidencing such warranty, contract or insurance, to the consumer upon the vehicle's sale or lease, when available.

e. Dealerships will comply with the requirements of N.J.A.C. 13:21-11.12, "Issuance of temporary initial registration" and N.J.A.C. 13:21-11.13, "Expiration date of temporary initial and transfer registration."

f. Dealerships will provide all purchasers with a copy of the odometer disclosure statement.

g. Dealerships agree to obtain an original signature from the customer on all documents requiring signature including, but not limited to, lease applications and loan applications.

h. Dealerships agree to provide written estimates signed by the consumer for all mechanical work required to perform the necessary repairs to the automobile in order to alleviate the consumer's complaints.

3. Dealerships acknowledge that a consumer has the right to cancel a leasing/financing transaction for any reason prior to signing the lease/financing agreement. In addition, Dealerships acknowledge that consumers may cancel such transaction, regardless of whether it is a lease or finance, if the deal is "subject to" conditions which were not satisfied, or if there are material changes in the terms of the deal, including, but not limited to, a credit denial or a change in price or interest rate. If, in any of these instances, a consumer requests to cancel a transaction, Dealerships agree to promptly cancel the deal which shall include return of all deposits, regardless of whether designated non-refundable, return of any trade-in vehicle and return by the prospective purchaser of

the new automobile to the dealership. Dealerships will not, under these circumstances, inform the consumer that the deal cannot be canceled, or that the consumer's (or a co-signer's) credit will be adversely affected by the cancellation, or that the consumer's trade-in automobile was sold.

4. Dealerships agree to comply with N.J.S.A. 56:8-2.22, in that they will not require or request a consumer to sign a document as evidence or acknowledgment of a sale or lease transaction or contract, or of the discharge by Dealerships of any obligation to the consumer, unless Dealerships shall, at the same time, provide the consumer with a full and accurate copy of each document so presented for signature.

5. Within thirty (30) days of the execution of this Agreement by all parties, Dealerships shall provide the Attorney General with an acknowledgment that each officer, director, owner and general manager of each of the dealerships herein has received a copy of this Agreement and has certified to having read it. Dealerships agree to a continued obligation to keep all of their officers, directors, owners and general managers informed of the terms set forth herein. With respect to managerial employees other than general managers and non-managerial employees, Dealerships agree to provide a notice containing the transaction practices contained in paragraphs 2 and 4 of this Agreement.

6. For a one-year period following the date of execution of this Agreement by all parties, Dealerships will forward to the Division any written consumer complaint Dealerships receive from any state or local consumer protection agency (other than the Division), within thirty (30) days following its receipt. Dealerships will also forward to the Division any written consumer complaint received directly from a consumer which is not resolved within thirty (30) days. The Division will likewise forward to Joseph H. McErlean ("McErlean"), who will serve as ombudsperson for

Dealerships, any consumer complaints received by the Division of Consumer Affairs or any county or municipal CALA office within thirty (30) days of its receipt. Within thirty (30) days of receiving said consumer complaints, Dealerships will send a written response to each complaining consumer, with a copy to the Division at the following address:

Diana Petrella, Case Management Tracking Supervisor  
Division of Consumer Affairs  
Office of Consumer Protection  
124 Halsey Street  
P.O. Box 45025  
Newark, New Jersey 07101

If Dealerships' written response disputes the consumer's complaint or the relief sought by the consumer, the response will include copies of all documents related to Dealerships' dispute of the complaint. If Dealerships' written response does not dispute the consumer's complaint or the relief sought by the consumer, Dealerships' response to the consumer will include all documents necessary or appropriate to satisfy the consumer's requested relief including evidence of any payment or credit issued to the consumer.

7. In the event that Dealerships dispute a consumer's complaint or the relief sought by the consumer, Dealerships shall notify the consumer, as part of the response required by paragraph 6 above, that he or she may request, within thirty (30) days of the receipt of the notice, referral to the Division of Consumer Affairs' Alternative Dispute Resolution ("ADR") Unit to reach a resolution of the complaint through binding arbitration. The notification of the availability of the procedure will be in the form required by the OCP Case Management Tracking Supervisor, who will receive copies of all notices sent to consumers pursuant to this paragraph. If the consumer timely requests binding arbitration through the ADR Unit, the OCP Case Management Tracking Supervisor will

forward the matter to the ADR Unit and shall notify the consumer and Joseph H. McErlean, on behalf of Dealerships, of the referral. Thereafter, the matter will proceed in accordance with the Guidelines established by the ADR Unit, a copy of which is annexed hereto as Exhibit A.

#### PAYMENTS

8. Dealerships agree that in accordance with N.J.S.A. 56:8-11 and N.J.S.A. 56:8-13, they shall pay to the State of New Jersey the sum of forty thousand (\$40,000.00) dollars as civil penalties, \$13,550.42 as reimbursement of administrative costs of investigation, and \$5,100.00 attorneys fees.

9. Said payment shall be made upon the execution by all parties of this Agreement and be by certified check or money order made payable to the "Treasurer - State of New Jersey" and delivered to the following address:

Ginger R. Provost, Deputy Attorney General  
Division of Law  
124 Halsey Street, 5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101

10. Respondents shall be jointly and severally liable to pay consumer restitution for the consumers listed in Exhibit B in the amounts indicated. Compensation to said consumers is solely the responsibility of Dealerships and/or their insurance carrier(s). In no event will the State bear any responsibility for these amounts.

11. The consumers listed in Exhibit C shall be advised by The Division that he or she may request referral to the ADR Unit to reach a resolution of his or her complaint through binding arbitration. Should the consumer request binding arbitration through the ADR Unit, the OCP Case Management Tracking Supervisor will forward the matter to the ADR Unit and shall notify the

consumer and Joseph McErlean on behalf of Dealerships of the referral. Thereafter, the matter will proceed in accordance with the Guidelines established by the ADR Unit.

#### EFFECT OF AGREEMENT

12. This Agreement resolves all matters at issue, known by the Division as of the date of the execution of this Agreement between the Division and Respondents related to the Division's inquiry. In consideration of the covenants entered into herein, the Division shall not institute any civil proceedings or take any civil action against Respondents for specific investigative inquiries conducted prior to the entry of this Agreement, except to enforce the agreed upon restitution to consumers as indicated in Exhibit B and/or enforce the payments of any monies due to the State under this Agreement.

13. Respondents, their owners, officers, directors, general managers and employees shall not represent or imply that any sales, leasing or advertising practice or other act or practice hereinafter used or engaged in by Dealerships has been required or approved, in whole or part, by the Attorney General, the Division of Consumer Affairs, the State of New Jersey or any of the State's agencies or agents or subdivisions as a result of this Agreement.

14. The parties acknowledge that for purposes of enforcement of this Agreement, New Jersey law shall govern the terms and provisions herein.

15. This Agreement constitutes the entire agreement between the parties hereto and shall bind the parties hereto and their respective officers, directors, agents, employees, successors and assigns.



16. If, after signing this Agreement, Respondents engage in any further acts or practices which constitute a violation of this Agreement or the Act, they shall be subject to the imposition of enhanced penalties pursuant to the provisions of N.J.S.A. 56:8-13.

17. It is further understood and agreed that nothing contained in this Agreement shall be construed to limit or affect the rights of any persons or entities who are not parties to this Agreement with respect to any of the matters contained herein.

18. Nothing contained herein shall in any manner or fashion be construed to limit or affect any position that the parties may take in any future or pending action not specifically encompassed herein.

19. The parties represent that an authorized representative of each has signed this Agreement with full knowledge, understanding and acceptance of its terms and that this person has done so with authority to legally bind the respective party.

20. Any and all notices which shall be forwarded pursuant to this Agreement shall be sent to the following individuals and addresses:

a. All notices directed to the OCP Case Management Tracking Supervisor shall be sent to:

Diana Petrella, Case Management Tracking Supervisor  
Division of Consumer Affairs  
Office of Consumer Protection  
P. O. Box 45025  
Newark, New Jersey 07101

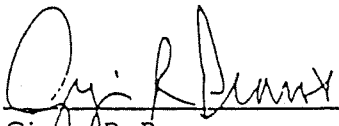
b. All notices directed to Dealerships shall be sent to:

Joseph H. McEriean  
Mt. Ephraim Dodge  
620 N. Black Horse Pike  
Mt. Ephraim, New Jersey 08059

21. Any amendments to this Agreement must be in writing and signed by all parties to be bound.

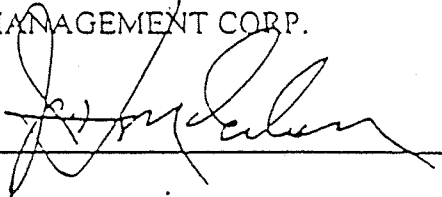
22. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument only when they are affixed together.

JOHN J. FARMER, JR.  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Ginger R. Provost  
Deputy Attorney General

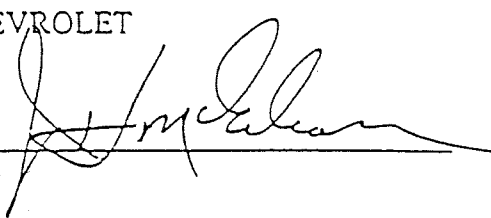
Dated: April 27, 2001

FOULKE MANAGEMENT CORP.

By: 

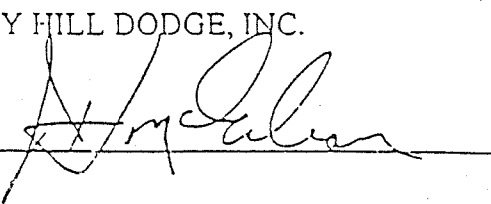
Dated: APRIL 18, 2001

MALL CHEVROLET

By: 

Dated: APRIL 18, 2001

CHERRY HILL DODGE, INC.

By: 

Dated: APRIL 18, 2001

ATLANTIC CHRYSLER-PLYMOUTH, INC.

CHERRY HILL KIA

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2001

CHERRY HILL MITSUBISHI

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2001

MT. EPHRAIM DODGE

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2001

MALL CHRYSLER PLYMOUTH

By: \_\_\_\_\_

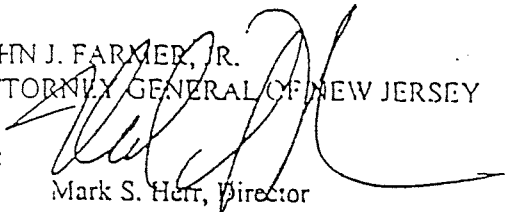
Dated: \_\_\_\_\_, 2001

CHERRY HILL SUBARU

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2001

JOHN J. FARMER, JR.  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Mark S. Herr, Director  
Division of Consumer Affairs

Dated: *April 27*, 2001