



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: July 17, 2012

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: MEGA RV CORP. dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest No. PR-2245-10

TYPE: Vehicle Code section 3070 termination protest
"Proposed Order Granting Respondent's Motion to Dismiss Protest No. PR-2245-10 (Scotts Valley Location) Re: Termination"

PROCEDURE SUMMARY:

- PROTESTS FILED ON CALENDAR: July 13, 2010
- MOTIONS FILED: Respondent's Motion to Dismiss Protest
- COUNSEL FOR PROTESTANT: Michael J. Flanagan, Esq.
Gavin M. Hughes, Esq.
Danielle R. Vare, Esq.
Law Offices of Michael J. Flanagan
- COUNSEL FOR RESPONDENT: Louis S. Chronowski, Esq.
James D. McNairy, Esq.
Seyfarth Shaw LLP

EFFECT OF PROPOSED ORDER: The Proposed Order would grant Respondent's Motion to Dismiss the protest challenging the termination of the franchise of Mega RV Corp, dba McMahon's RV ("Mega RV") for its Scotts Valley location as the protest is moot.

SUMMARY OF PROPOSED ORDER:

- This protest is one of four protests relating to Mega RV's dealership in Scotts Valley and one of 12 protests of Mega RV that were consolidated for hearing on their merits. The other eight of these protests involve a separate franchise for dealership locations in Irvine and Colton. The consolidated hearing on the 12 protests began on August 9, 2011, and, after 35 days of hearing, the in-person hearing concluded on February 1, 2012. An additional day of hearing was conducted telephonically on April 26, 2012.
- This Motion to Dismiss now being considered was filed on January 12, 2012, about two weeks before the in-person evidentiary hearing was concluded.

- This motion sought dismissal of all four of the protests relating to Mega RV's franchise for the Scotts Valley location (referred to for convenience as "the Scotts Valley protests"). These were a "modification protest", a "warranty claims protest", an "incentive claims protest" and a "termination protest". For reasons stated below, only the termination protest is before the Board for its consideration at this time.
- As to the four "Scotts Valley protests", Roadtrek claimed that:
 1. "Scotts Valley" was no longer a "dealer";
 2. Mega RV lacked standing to bring the protests; and,
 3. Because of the undisputed closure of the dealership, the four protests are moot.

Re: Standing

- The ALJ determined that none of the four protests should be dismissed because of Roadtrek's claims that "Scotts Valley" was no longer a "dealer" and that Mega RV lacked standing to bring the protests.
- The ALJ found the four protests were properly brought by Mega RV because:
 1. There is no such entity as "Scotts Valley RV" or anything similar;
 2. Mega RV properly brought the protests as it is Mega RV that is the "franchisee" and the "dealer" as those terms are defined in the Vehicle Code; and,
 3. Mega RV is the Protestant with standing to bring the four protests relating to its dealership at the Scotts Valley location.

Re: Mootness

Termination Protest (PR-2245-10):

- The termination protest is the only one of the four protests of Mega RV regarding its dealership in Scotts Valley presently before the Board.
- The ALJ found that the termination protest is moot.
- It was undisputed that Mega RV's dealership at the Scotts Valley location had closed in "approximately" October 2010 "for all purposes" (almost a year and a half prior to the filing of the motion) and there was no likelihood that it would ever be reopened. The ALJ found that there was no need and no ability to apply the good cause factors to determine what the impact would be if the franchise were terminated and the dealership were closed upon the termination of the franchise. A decision of the Board sustaining the protest would not protect the public interest or the franchisee by preventing the closure of the dealership, an event that would usually occur upon the termination of a franchise. The closure of the dealership had occurred in October 2010 and there was no intention of Mega RV to reopen a dealership at the Scotts Valley location.

- It was determined that Roadtrek's motion, seeking to dismiss the termination protest for mootness rather than for good cause, should be granted.

Modification Protest (PR-2198-10):

- The modification protest is not before the Board.
- During the hearing of the Motion to Dismiss, counsel for Protestant, for reasons unrelated to the Motion to Dismiss, agreed that the modification protest should be dismissed. The modification protest was dismissed based upon Protestant's subsequently filed written Request for Dismissal.

Warranty Claims Protest (PR-2209-10) and Incentive Claims Protest (PR-2211-10):

- The warranty claims protest and the incentive claims protest are not before the Board at this time.
- The ALJ found that these protests should not be dismissed because of lack of standing or mootness. As stated above, Mega RV has standing to bring the protests. The statutory warranty and incentive claims of Mega RV are not moot as they survive the closure of the dealership at the Scotts Valley location. The results of the merits hearing on these two protests will be before the Board along with the eight protests for the Irvine and Colton locations (some of which also involve warranty and incentive claims).

Proposed Order:

- Counsel for the parties had been notified of the above and that this Proposed Order recommending dismissal of the termination protest would be held in abeyance pending such time as the Board had before it the findings of fact and proposed decisions of all of the remaining protests, including the warranty claims and incentive claims protests of Mega RV for its Scott's Valley location as well as for the Irvine and Colton locations.

RELATED MATTERS:

- Related Case Law: None.
- Applicable Statutes: Vehicle Code sections 285, 331.1, 331.3, 415, 470, 670, 3070, and 3071; Health and Safety Code section 18010.
- Related Board Protests: There are 11 *Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc.* protests that are pending a decision on their merits. These Proposed Decisions will be considered at the August 23, 2012, General Meeting as follows:
 - Protest Nos. PR-2199-10 (Colton) and PR-2201-10 (Irvine) – Section 3070 modification;
 - Protest Nos. PR-2206-10 (Colton), PR-2208-10 (Irvine), and PR-2209-10 (Scotts Valley) – Section 3075 warranty reimbursement;

- Protest Nos. PR-2205-10 (Colton), PR-2211-10 (Scotts Valley), and PR-2212-10 (Irvine) – Section 3076 franchisor incentive program reimbursement;
- Protest No. PR-2233-10 (Colton) – Section 3072 establishment; and,
- Protest Nos. PR-2244-10 (Colton/Irvine) – Section 3070 termination.