STATE OF CALIFORNIA

DECISION COVER SHEET

[ ] ACTION BY: Public Members Only **[X] ACTION BY**: All Members

To : BOARD MEMBERS **Date: October 4, 2012**

CASE: **MEGA RV CORP. dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.**
Protest No. PR-2199-10

TYPE: **Vehicle Code section 3070(b) Protest (Modification Colton)**
Order Confirming Decision to Sustain Protest (herein "Decision")

PROCEDURE SUMMARY:

- PROTEST FILED ON CALENDAR: January 29, 2010
- MOTION RELEVANT TO MODIFICATION PROTESTS FILED:
    - Protestant's Motions In Limine and Requests for Conclusions of Law and Other Relief – Administrative Law Judge Skrocki issued Order Granting in Part and Denying in Part Protestant's Motions in Limine (August 3, 2011)
        - ALJ Skrocki's Order relative to the modification protests is stated in full in the Proposed Decisions.
        - Among other things, ALJ Skrocki held that "…there is no need for a hearing to address the good cause factors as stated in Section 3071."
        - This conclusion was reached because: (1) If Protestant could not establish a modification that would substantially affect Protestant's sales or service obligations or investment, there was no right to file a protest pursuant to Section 3070(b); and (2) If Protestant did establish such a modification, because it was undisputed that Respondent had not provided the notices required prior to such modification, the modifications were legally ineffective and would not become effective even if Respondent could prove good cause during a hearing.
        - Also, ALJ Skrocki found that Respondent had the burden of proof to establish the existence and effect of its factual claim that since Protestant was no longer in "good standing" under the parties' Dealer Agreement, Protestant did not have a right to "exclusive" territories. That being so, Respondent contends, the establishment of the additional Roadtrek franchises within Protestant's (formerly) "exclusive" territories was not a modification of its franchise and therefore the Section 3070(b) notices were not required.

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- HEARING ON MERITS: Hearing dates in 2011: August 9 through 12; August 15 through 19; September 21 through 23; September 30; November 7 through 11; November 14 and 15; November 17 and 18; and November 28 through December 2. Hearing dates in 2012 were the following: January 9 and 10; January 12 and 13; January 18 and 19; January 31; and February 1. Following the hearing, ALJ Woodward Hagle submitted a Proposed Decision recommending that the protest be overruled.
- REJECTION BY THE BOARD OF THE PROPOSED DECISION: The Proposed Decision was considered by the Board at its Special Meeting of August 23, 2012. The Board, on August 23, 2012, acting by and through its Public Members and Dealer Members declined to adopt the Proposed Decision and instead ordered that the protest be sustained. A formal Board order memorializing the sustaining of the protest was to be written by staff along with Public Member Glenn Stevens.[1]

- COUNSEL FOR PROTESTANT: Law Offices of Michael J. Flanagan
  Michael J. Flanagan, Esquire
  Gavin M. Hughes, Esquire
  Erin R. Hegedus McIntosh, Esquire
  Danielle R. Vare, Esquire (as of 11/21/11)

- COUNSEL FOR RESPONDENT: Seyfarth Shaw, LLP
  Louis S. Chronowski, Esquire
  Kavitha Janardhan, Esquire (until 5/1/12)
  James D. McNairy, Esquire

EFFECT OF DECISION:
This Order confirms the Board's Decision made at its meeting of August 23, 2012, that sustained Protest No. PR-2199-10. Roadtrek is barred from modifying the franchise of Mega RV as Roadtrek has not complied with Section 3070(b)(1).

SUMMARY OF DECISION:

- Respondent asserted that there was no modification by Respondent as the loss of the exclusive territory provided in the franchise occurred because of the terms of the franchise themselves. The contention was rejected because Section 3070(b)(1) states in relevant part: "(b) (1) Notwithstanding … the terms of any franchise, a franchisor of a dealer of recreational vehicles may not modify or replace a franchise … unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification … ."

- The Board found that Protestant had met the threshold requirements for the application of

[1] It is possible that the Board may refer this matter to the Department of Motor Vehicles pursuant to Section 3050(c)(1) and (c)(3). However, because of Section 3050(c), which provides in part: "A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor…" consideration of such a referral will require a separate agenda item to be considered only by the Public Members at the next Board meeting.

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Section 3070(b)(1), that is that there was an intended modification and that the modification would substantially affect Protestant's sales or service obligations or investment.

- Because Section 3070(b)(1) bars any such modification unless the provisions of the statute are complied with, and because it was undisputed that the notices were not provided by Respondent, the intended modification has no legal effect.

- Whether Respondent could prove or did prove "good cause" for the modification is irrelevant. An attempt to modify the franchise without compliance with the statutes is of no legal effect whether there is good cause for the intended modification or not.

- Because of the number of protests, the consolidated hearing included evidence as to whether there was good cause for the modification. Considering all the evidence introduced during the consolidated and companion hearings, it was also concluded that if Roadtrek had complied with the notice requirements of Section 3070(b), Roadtrek did not meet its burden of proof to establish good cause to permit the modification of the franchise terms that granted Mega RV the exclusive territory.

RELATED MATTERS:

- Related Case Law: None.
- Applicable Statutes: Vehicle Code sections 331.1, 331.2, and 3070(b).
- Related Board Protests: Protest No. PR-2201-10 (Irvine) Section 3070(b) modification Decision.

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