



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: May 23, 2013

From : ADMINISTRATIVE LAW JUDGE: Jerold A. Prod

CASE: BURBANK KAWASAKI, INC. v. KAWASAKI MOTORS CORP., U.S.A.
Protest Nos. PR-2328-12 and PR-2333-12

TYPE: Vehicle Code section 3060 Termination
Proposed Decision

PROCEDURE SUMMARY:

- FILED ON CALENDAR: February 23, 2012
- HEARING: February 5-7, 2013
- COUNSEL FOR PROTESTANT: Michael M. Sieving, Esq.
Callahan Thompson Sherman & Caudill, LLP
- COUNSEL FOR RESPONDENT: Maurice Sanchez, Esq.
Kevin M. Colton, Esq.
Baker & Hostetler LLP

EFFECT OF PROPOSED DECISION: The Proposed Decision overrules the protests and permits Kawasaki to terminate Protestant's motorcycle and ATV franchises.

SUMMARY OF PROPOSED DECISION:

- Protestant Burbank Kawasaki, Inc. (BKI) is located in the city of the same name. The dealer principal is Leon Bellissimo. He is a long time Kawasaki dealer, having purchased the dealership in 1978 for about \$100,000. At issue in this proceeding are two of several franchises Leon Bellissimo owns; the Kawasaki motorcycle and ATV franchises.
- In recent years sales of motorcycles and ATV's at Burbank Kawasaki have been extremely poor. From 2008 to the present they have ranged between 41.4 and 19.8 percent of expectations, trending downward. There is no serious contention that sales expectations have been set unreasonable high, or that sales have been or are satisfactory.

- Protestant's case is based almost entirely on an assertion, as an overriding existing circumstance, that its poor performance is due to actions or inactions of Respondent Kawasaki Motors Corp. (KMC) and Kawasaki Motors Finance Corporation (KMFC). The claim is that KMC and KMFC have wrongfully denied Protestant access to inventory of vehicles necessary to make sales and continue as a viable dealership.
- BKI's flooring credit was suspended on June 27, 2011. From that time to the present, BKI has been able to purchase product from KMC only on a COD basis. The June 27, 2011 credit line suspension was originally based on the failure to provide required financial statements, which were by that date long overdue.
- Subsequent annual comprehensive reviews, the first of which was in late 2011, have documented the poor condition of the dealership. In addition to extremely poor sales, the review notes untimely payments to KMFC, units not paid for or paid late, lack of cooperation of dealer principal Leon Bellissimo during floor checks to ascertain the whereabouts of vehicles, and increased difficulty in communicating with Leon Bellissimo generally.
- KMC has required a credit line of \$848,000 in order to assure the ability to carry a representation of the complete KMC product line in sufficient quantity to meet expected demand. KMFC has required collateral of 25 percent, or \$212,000, in the form of an irrevocable letter of credit (ILOC) in that amount. The 25 percent collateral requirement is fairly standard.
- Leon Bellissimo has been unable to obtain an ILOC in the amount of \$212,000, asserting that Bank of America and Wells Fargo Bank have terrible customer relations and that neither knew what an ILOC was. Faced with his inability to obtain an ILOC in the amount of \$212,000 to support a flooring line of credit in the amount of \$848,000, Leon Bellissimo sought to have KMC, and KMFC, accept purchase orders from governmental agencies as collateral for specific limited inventory purchases. He also sought acceptance by KMFC of the offer of his home as collateral.
- Numerous requests to this effect were all turned down. Leon Bellissimo has also periodically sought to have his credit line opened in smaller amounts to get delivery of specific vehicles for particular sales. These requests were also turned down. Leon Bellissimo testified that on one or more occasions he was orally told by someone that his credit line could be opened for a particular transaction. This was not substantiated. Cheryl Mottel of KMFC testified that this did not happen, and could not have happened without her knowledge. Leon Bellissimo's claim is that these refusals by KMC and KMFC to accept alternative means of securing inventory are the direct cause of poor performance, and have affectively forced him out of business.
- Leon Bellissimo was consistently told that BKI, or for that matter any Kawasaki dealer, could purchase product in only two ways; through an approved line of credit, or by paying in cash. Due to inability to obtain an ILOC and a lack of sufficient cash, inventory at BKI on the eve of this hearing was down to 8 motorcycles and 3 ATVs.
- In terms of sales, BKI ranks 39th of 39 dealerships in the district, 241st of 242 in the region

and 1197th of 1206 in the nation. Context notwithstanding, if one cannot obtain inventory one cannot make sales. Leon Bellissimo's assertion that neither Bank of America or Wells Fargo knew what an ILOC was is not credible. KMC and KMFC were not unreasonable in their requirements of \$848,000 in flooring credit or 25% of that amount as collateral. Leon Bellissimo at one point asked that a line of credit be opened for protestant at \$20,000. No dealer has ever been granted flooring credit anywhere near that low level. Protestant for years (2006-2010) maintained and used credit well in excess of the \$848,000 of flooring credit now required.

- Neither KMC nor KMFC are mortgage brokers and cannot be required to accept a residence as collateral. Likewise neither is required to accept purchase order arrangements between dealers and customers as collateral for the shipment of inventory.
- For the above reasons and the good cause factors flowing therefrom, the Proposed Decision is that the protest be overruled and that Respondent KMC be allowed to terminate Protestant's motorcycle and ATV franchises.

RELATED MATTERS:

- Related Case Law: There are no published court decisions applicable to this case.
- Applicable Statutes and Regulations: Vehicle Code sections 331.1, 331.2, 3060, and 3061.