



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: November 5, 2013

From : ADMINISTRATIVE LAW JUDGE: Lonnie M. Carlson

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 Following Remand

PROCEDURE SUMMARY:

- FILED ON CALENDAR: February 23, 2012
- HEARING ON REMAND: September 17-18, 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 conditionally sustains the Protests.

SUMMARY OF ALJ PROD'S 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 unreasonably high, or that sales have been or are satisfactory.
- 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.
- 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 the February 5, 2013 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, ALJ Prod issued a Proposed Decision that the protests be overruled and that Respondent KMC be allowed to terminate Protestant's motorcycle and ATV franchises.

- The Board considered that Proposed decision and at its July 25, 2013, Special Meeting, the Public Members rejected the Proposed Decision and remanded the matter for a settlement conference and further proceedings.

PROPOSED DECISION FOLLOWIN REMAND:

- The Board issued the following Orders in its Remand Order:
 1. The reasonable amount of flooring required for Protestant to perform its contractual obligations, and
 2. A reasonable timeframe to secure such flooring, and
 3. What will be needed for Protestant to meet its contractual obligations to stock a complete line of Kawasaki Products, and
 4. The extent of Protestant’s future sales penetration into its Statistical Evaluation Area, and
 5. Recommendations that would be appropriately within Section 3067 of the Vehicle Code.
- A settlement conference was convened before an Administrative Law Judge without resolution.
- Thereafter the matter was heard in a two day hearing and the ALJ’s Proposed Decision Following Remand makes the following findings:
 1. The reasonable amount of flooring required for Protestant to perform its contractual obligations is \$885,219. If BKI seeks financing through KMFC, then it must meet their ILOC requirement.
 2. The reasonable timeframe for Protestant to secure such flooring is 45 days after the effective date of the Board’s decision.
 3. The reasonable amount of inventory the Protestant should have stored or available through a delivery service during the peak buying season beginning each March is 75 motorcycles; and BKI should use its best efforts to promote and sell 150 motorcycles annually.

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.