



## DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: November 6, 2013

From : ADMINISTRATIVE LAW JUDGE: Diana Woodward Hagle

CASE: McCONNELL CHEVROLET BUICK, INC. v. GENERAL MOTORS, LLC  
Protest Nos. PR-2369-13 and PR-2370-13

TYPE: Vehicle Code section 3060 Termination

### PROCEDURE SUMMARY:

- FILED ON CALENDAR: June 27, 2013, and July 1, 2013
- MOTIONS FILED: None
- HEARING: October 22, 2013
  
- COUNSEL FOR PROTESTANT: Carter Law Office  
By John Jeffery Carter, Esquire
  
- COUNSEL FOR RESPONDENT: Isaacs Clouse Crose & Oxford LLP  
By Gregory R. Oxford, Esquire  
  
Of Counsel: Brian K. Cullin, Esquire  
General Motors LLC

EFFECT OF PROPOSED DECISION: The Proposed Decision overrules both Protest No. PR-2369-13 (Chevrolet) and Protest No. 2370-13 (Buick)

### SUMMARY OF PROPOSED DECISION:

- McConnell Chevrolet Buick, Inc. is out of business, evicted in August from its General Motors dealership premise in Gridley.
- At least since the Spring of 2013, McConnell's business had been moribund: even before it lost its wholesale line of credit on March 20<sup>th</sup>, it had sold few new GM vehicles.
- Its last warranty work was performed on March 26<sup>th</sup>. Financial difficulties prevented it from offering anything more than routine lube, oil and filter changes and tire rotations; when GM representatives visited the dealership in April and May, the service department "looked like a ghost town" --- service technicians were rarely around and no tools of the sort required for warranty and other non-routine repairs were observed.

## **REFERENCES IN THE PROPOSED DECISION TO “ON THE RECORD” DISCUSSIONS:**

The parties elected to go forward with a “good cause” hearing, as follows:

“ADMINISTRATIVE LAW JUDGE [ALJ] HAGLE: ....

Mr. Carter, your pre-hearing memorandum pretty much restates what we discussed in the pre-hearing conference –

MR. CARTER: Yes, Your Honor.

ALJ HAGLE: -- which was not – the dialogue there was not memorialized. It fleshes out the difficulties of the corporation, your client, is having with its ownership.

MR. CARTER: That’s correct, Your Honor. There is a dispute among our shareholders or purported shareholders. The corporation really is deadlocked and paralyzed, and absent some type of civil action for declaratory relief as to declaring who the shareholders are and, therefore, who can control the corporation, we’re powerless. We’re paralyzed.

The gentlemen who are with me today, Michael McConnell and Bill Marker were the persons, Mr. Marker especially, who was in operational control of the corporation during all operative times as discussed in GM’s brief.

And so we can – we can address some of those issues, but, frankly, Your Honor, we – as indicated in the brief, we have no evidence to counter the evidence that GM will be prepared to present today.

ALJ HAGLE: And the difficulties of the corporate ownership and corporate disputes are not within the jurisdiction of the New Motor Vehicle Board.

MR. CARTER: Understood, Your Honor.

ALJ HAGLE: So it seems as though the corporate entity has two problems: Ownership, and from the memorandum it sounds like financial difficulties that make it unable to continue as a viable dealership.

MR. CARTER: That’s correct, Your Honor.

ALJ HAGLE: All right.

Mr. Oxford, would you like to weigh in on any of this and how we should proceed?

MR. OXFORD: I agree with what you just said completely, Your Honor. The dealership has functionally ceased to exist. And whereas the dealership is paralyzed or doesn’t exist, General Motors is paralyzed and doesn’t exist in Gridley. That’s where the dealership is located. So we’re here to solve that problem, unhappily, by seeking the Board’s permission to terminate the dealer agreement so that General Motors can move forward.

ALJ HAGLE: So both counsel have agreed, at least tacitly, that the best way to proceed is to put on a hearing, a good cause hearing, just as though it were a full-blown protest with discovery depositions, requests for documents, et cetera?

MR. OXFORD: Yes, Your Honor. Unfortunately, I think that’s the simplest thing to do, and I don’t believe it will take very long.

ALJ HAGLE: All right.

MR. CARTER: Your Honor, given the dysfunction, if you will, in the ownership ranks of our corporation, I believe that’s the safest thing for GM to do as well.

ALJ HAGLE: Indeed. The corporation is before the Board [and is] within the jurisdiction of the Board and subject to the Board’s order.

MR. CARTER: Yes.

ALJ HAGLE: Is that agreed, Counsel?

MR. CARTER: Yes.

MR. OXFORD: Yes.” (RT 9:6 to 11:23)

The following discussion concerned the record of the hearing:

“ADMINISTRATIVE LAW JUDGE [ALJ] HAGLE: ... I would like to make a comment for the record. And if either counsel has any problems with my comment, I will certainly encourage counsel to speak up.

The examination of this witness [Saul Escalante] and the identification of documents has been done expeditiously, I sense because of concerns of both counsel to represent their clients in the best possible way.

I think as lawyers we all know that there have been parts of Mr. Escalante’s direct examination that have been elicited without objection by Mr. Carter, and I understand that that is the position that Protestant is committed to at this point.

In regard to the documents, I would like to say that there has been the same observation I’ve made, that they’ve been identified without objection by Protestant’s attorney, that they have been identified without objection or without objection to any of the witness’ testimony, even though there have been admissibility problems relating to foundation, relating to authentication and maybe some other aspects of the documents that would otherwise be objected to.

For example, I made a note, Exhibit 19, I believe, there was some testimony by Mr. Escalante about the June 14<sup>th</sup> document, and, of course he isn’t either the recipient or the author of it. So otherwise in a contested hearing there would be an objection, and we’d discuss it, and I’d make a ruling. But before I admit the documents, I want to make that comment for the record.

Mr. Carter?

MR. CARTER: Your Honor, Protestant is mindful of the comments you’ve made. The fact of the matter is that the dealership has been suffering financial difficulties for some time, and in fact it has not been open since the date of the – of eviction of August 21.

From my standpoint as counsel for Protestant, I could have chosen to challenge admissibility of evidence, I could have made GM’s job more difficult, to no avail in the long run. So I chose to let the evidence be marked and discussed, and – and [have] Mr. Escalante discuss it without challenging the foundation of it.” (RT 63:9 to 64:25)

### **RELATED MATTERS:**

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