



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: March 27, 2014

From : ADMINISTRATIVE LAW JUDGE: Kymberly Pipkin

CASE: GUARANTEE FORKLIFT, INC. dba GFL, INC. v. CAPACITY OF TEXAS, INC.
Protest No. PR-2361-13

TYPE: Vehicle Code section 3060 Termination

PROCEDURE SUMMARY:

- FILED ON CALENDAR: February 27, 2013
- MOTIONS FILED: Respondent's Motion to Dismiss and Strike Protest was denied on August 14, 2013
- HEARING: December 11, 2013
- COUNSEL FOR PROTESTANT: Michael J. Flanagan, Esq.
Gavin M. Hughes, Esq.
Danielle R. Vare, Esq.
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- COUNSEL FOR RESPONDENT: Mo Sanchez, Esq.
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Timothy R. Brownlee, Esq.
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Wait, Brownlee, Berger & Dewoskin

EFFECT OF PROPOSED DECISION: The Proposed Decision sustains Protest No. PR-2361-13

SUMMARY OF PROPOSED DECISION:

- Termination was based solely on the franchisee's failure to comply with the terms of the franchise, purportedly by failing to protect confidential and proprietary trade secret information and deceiving Respondent regarding the misuse of access to its online parts ordering system.

- The Franchise Agreement was entered into in July 1995, had never been updated or modified, and predated the online parts system by thirteen years. The log-in screen to the on-line parts ordering system warned the user that violation of the terms and conditions for use of the website could result in loss of the use of the website and may constitute an infringement or violation of the Respondent's intellectual property rights. Respondent, upon learning that Protestant's former general manager was using the system through a password changed after he left the dealership, terminated Protestant's use of the system.
- The actual Franchise Agreement contained none of the clauses cited by Respondent in the Notice of Termination. Although Protestant may have violated the terms of use of the website, its privilege to use that website was revoked, and it did not violate the terms of its Franchise Agreement.

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.