



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: March 27, 2014

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: McCONNELL CHEVROLET BUICK, INC. v. GENERAL MOTORS, LLC
Protest Nos. PR-2382-14 and PR-2383-14

TYPE: Vehicle Code section 3060 Termination

PROCEDURE SUMMARY:

- FILED ON CALENDAR: February 14, 2014
 - MOTIONS FILED: Respondent's Motion to Dismiss Protests for Lack of Jurisdiction, and for an Award of Sanctions
 - COUNSEL FOR PROTESTANT: Kent Steffes in Pro Per
 - 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:

1. The Motion to Dismiss: The Proposed Order grants Respondent's Motion to Dismiss but would defer issuing the decision until after a ruling on the Motion for Sanctions.
2. The Motion for an Award of Sanctions: The Proposed Order would remand the Motion for an Award of Sanctions for an evidentiary hearing before an ALJ, to be conducted in compliance with the Regulation applicable to such a motion.

SUMMARY OF PROPOSED ORDER:

Motion to Dismiss

- This is the second time that protests have been filed in behalf of this Protestant regarding termination of its Chevrolet and Buick franchises. The first set of protests were filed in June and July of 2013, and, after a hearing on the merits before ALJ Hagle, the Board issued its order on November 12, 2013, overruling the protests. GM then terminated both franchises effective on or about November 14, 2013.

- The protests presently before the Board were filed 3 months later, on February 14, 2014, by Mr. Kent Steffes, in pro per, but representing the same corporate Protestant. Mr. Steffes is the Chairman of the Board, a director, and shareholder. Mr. Steffes asserts that the prior protests were not properly before the Board as the notices of termination were not effective and neither the new officers nor new directors of the corporation authorized the prior proceedings. The changes in the officers and directors and sale of the shares of the corporation occurred without approval of GM.
- GM asserted, and the ALJ concluded that: the notices of termination were received by the corporate franchisee in June and July 2013, and resulted in timely filing of the first protests and a hearing on the merits of the protests before ALJ Hagle who recommended the Board overrule the protests finding that GM had established good cause for the termination of the franchises.
- Mr. Michael A. McConnell was the named “dealer operator” from the time the franchises were granted and remained as such until they were terminated. Thus, Mr. McConnell was the dealer operator when the first protests were filed and was present during the hearing before ALJ Hagle on the first protests.
- The Board adopted the proposed decision of ALJ Hagle on November 12, 2013, and GM effectively and legally terminated the Chevrolet and Buick franchises of protestant as of November 14, 2013.
- As to the present protests filed 3 months after the termination of the franchises: Vehicle Code section 3060 permits a protest to be filed by a “franchisee”, the definition of which requires there be a “franchise” in existence. At the time Mr. Steffes filed these later protests (February 14, 2014), there was no longer a “franchise” in existence between the parties; Protestant was not a “franchisee”; and thus the Board has no jurisdiction to hear and consider the protests.
- The ALJ is recommending that the two current protests filed by Mr. Steffes be dismissed but that the decision or order of dismissal not be issued until there is a final ruling by the Board on that portion of the motion that seeks an award of sanctions. There is a concern that “dismissal of the protests” for lack of jurisdiction may have the effect of precluding the Board from ruling on that part of the motion seeking the sanctions.

Motion for an Award of Sanctions

- An award of sanctions, including attorney’s fees and costs, is authorized by Section 551.21 of the Board’s regulations, if there are “bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay”. The section has some examples of “actions or tactics” and a definition of “frivolous” but no guidance as to “bad faith”.
- There is a need for legal interpretation of the meaning of the language - including whether there must be a showing of “bad faith” as well as a finding that the “actions or tactics” are either “frivolous” or “solely intended to cause unnecessary delay”, or just a showing of “frivolous” as argued by Respondent.

- In addition to the need for interpretation, there is a procedural problem in that the regulation states that “The ALJ shall not recommend an award of sanctions without providing notice and an opportunity to be heard.” Although Protestant and Mr. Steffes had an opportunity to and did submit an Opposition to the Motion, they were not apprised of the amount of attorney’s fees and costs sought by Respondent until Respondent filed its Reply to the Opposition, which was on the Friday prior to the Monday morning hearing.
- And, there is also a combination procedural and substantive problem in (c) of the regulation: If there is an issue of “bad faith” (which may be involved together with any of the reasons stated as discussed above) the regulation requires that “Whether there has been bad faith...shall be determined by the ALJ based upon testimony under oath or other evidence”. The hearing before the ALJ on the motion was a “law and motion” hearing during which no “testimony under oath” will typically occur.
- Also, (c) requires that “any proposed order recommending sanctions by the ALJ shall ... set[ing] forth the factual findings on which the sanctions are based, as well as setting forth the factual findings as to the reasonableness of the amounts to be paid.” Due to the use of the word “any”, these two requirements of factual findings will likely necessitate that there be an evidentiary hearing for all motions filed under this section regardless of the interpretation of the issue regarding bad faith. Because there is need for factual findings, in order to satisfy the requirement that the other party be given notice and an opportunity to be heard, there will likely be the need for discovery, possibly including depositions, prior to the hearing of the motion for sanctions. In addition, the ALJ may want the parties to brief whether the sanctions that may be awarded should be limited to just the attorney’s fees and costs incurred in responding to the protests or whether the attorney’s fees and costs that may be awarded could include those incurred in pursuing the sanctions. The attorney’s fees and costs for the latter may be significantly higher than those incurred only in connection with the motion to dismiss the protests.
- Also, the ALJ believed that the motion for an award of sanctions should be considered only after the Board determines that the protests should be dismissed.
- The Board has not had any prior motions filed pursuant to this regulation.

RELATED MATTERS:

- Related Case Law: There are no published court decisions applicable to the dismissal portion of this case. Whether there are court decisions applicable to the request for an award of sanctions will be determined if this portion of the motion is remanded for further hearing.
- Related Matters: Protests involving the same dealership were filed on June 27, 2013, and July 1, 2013, for the Chevrolet and Buick franchises respectively. A merits hearing was held before ALJ Hagle and at the November 12, 2013, Special Meeting, the Public Members of the Board adopted the Proposed Decision overruling the protests.
- Applicable Statutes and Regulations: Vehicle Code sections 331, 331.1, 331.2, 470, 3050, 3060, 3061 and 3066.
- Board’s Regulations: Section 551.13 and 551.21
- California Uniform Commercial Code sections 1201 and 1202