



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: June 4, 2015

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: WEST COVINA MOTORS, INC., dba CLIPPINGER CHEVROLET v. GENERAL MOTORS LLC¹
Protest No. PR-2348-12

WEST COVINA MOTORS, INC., dba CLIPPINGER CHEVROLET v. GENERAL MOTORS LLC
Protest No. PR-2213-10

PROCEDURE SUMMARY: Both protests challenge the intended termination of the Chevrolet franchise per Section 3060 of the Vehicle Code.

The following motions are presently before the Board:

1. GM's Motion to Dismiss [Second] Protest for Lack of Jurisdiction (PR-2348-12), Motion filed January 27, 2015;
2. "Protestant's Request that Board Exercise Its Continuing Jurisdiction Over the Confidential Stipulated Decision of the Board Resolving [First] Protest", Request filed February 9, 2015;
3. GM's "Motion to Dismiss for Lack of Jurisdiction Protestant's Request that the Board Exercise Its Continuing Jurisdiction Over the Confidential Stipulated Decision of the Board Resolving [First] Protest", Motion filed February 20, 2015

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¹ West Covina Motors, Inc. will be referred to as "WCM" and General Motors LLC will be referred to as "GM".

EFFECT OF PROPOSED ORDERS:

Adoption of the Proposed Orders would result in the following:

- a. GM's "Motion to Dismiss [the Second] Protest for Lack of Jurisdiction" would be granted. *West Covina Motors, Inc., dba Clippinger Chevrolet v. General Motors LLC*, Protest No. PR-2348-12 would be dismissed with prejudice;
- b. WCM's "Request that the Board Exercise Its Continuing Jurisdiction Over the Confidential Stipulated Decision of the Board Resolving [the First] Protest" would be denied. The Board would take no further action regarding its December 2010 Order adopting the Proposed Stipulated Decision and Order in *West Covina Motors, Inc., dba Clippinger Chevrolet v. General Motors LLC*, Protest No. PR-2213-10 as the Board finds that the franchise terminated in December 2012;
- c. GM's "Motion to Dismiss for Lack of Jurisdiction Protestant's Request that the Board Exercise its Continuing Jurisdiction over the Confidential Stipulated Decision of the Board Resolving [the First] Protest" would be granted. The Board would take no further action on WCM's Request as the Board finds that the franchise terminated in December 2012; and,
- d. The Protest of *West Covina Motors, Inc., dba Clippinger Chevrolet v. General Motors LLC*, Protest No. PR-2213-10 would be dismissed with prejudice, as the Board finds that the franchise terminated in December 2012.

SUMMARY OF PROPOSED ORDERS:

Unlike the Proposed Orders that address the motions of the parties in the chronological order of their filing (beginning with GM's Motion filed on January 27, 2015), this summary will begin with the filing of the first Protest, more than 5 years ago.

PRIOR PROCEEDINGS BEFORE THE BOARD:

- The first Protest, filed on February 22, 2010, was resolved by a Settlement Agreement that on December 15, 2010 became part of the Order of the Board "Adopting Confidential Stipulated Decision of the Board Resolving Protest." Thereafter, WCM failed to comply with the terms of the Settlement Agreement/Board Order and GM sought to terminate the Dealer Agreement pursuant to the December 15, 2010 Order of the Board.
- However, because GM failed to give the notice required by the December 15, 2010 Order, the Board, on August 22, 2012, after a hearing before ALJ Carlson, granted WCM additional time to either obtain adequate floor plan financing or complete a buy-sell as required by the Settlement Agreement/Board Order of December 15, 2010.
- During this additional time period, GM, on October 3, 2012, gave what GM called a "back up notice" of intent to terminate alleging that WCM failed to conduct sales and service operations for seven consecutive business days. WCM filed a timely protest to this notice

(thus creating the second Protest).

- WCM did not obtain floor plan financing but did submit a buy-sell that was approved by GM. However, on December 28, 2012, one-day before the time required for WCM to close the buy-sell, WCM filed a voluntary Chapter 11 (re-organization) petition in Bankruptcy Court.
- The Board stayed proceedings on the second Protest because of the bankruptcy filing.

PROCEEDINGS IN BANKRUPTCY COURT:

The Bankruptcy Court has made the following rulings:

- a. The Settlement Agreement/Board Order was not subject to the automatic stay in bankruptcy;
 - b. Because it is undisputed that the terms of the Settlement Agreement/Board Order were not satisfied, the Dealer Agreement terminated by its terms, as of December 2012, with no further action needed by GM;
 - c. The Bankruptcy Court granted the motion of the City of West Covina to convert WCM's bankruptcy case from a Chapter 11 (re-organization) to a Chapter 7 (liquidation) proceeding, with Mr. David A. Gill appointed as the Trustee for the Bankruptcy Estate of WCM. The City of West Covina was the largest creditor of WCM, with an unsecured claim of over \$7.5 million. (Exhibit H to GM's Motion)
 - d. Any rights that may exist under the Dealer Agreement (including the protests before the Board) can only be pursued by the Trustee of the Bankruptcy Estate of WCM (and not by WCM as WCM now seeks to do). The Trustee has declined to pursue any claims under the Dealer Agreement.
 - e. Because the Dealer Agreement terminated in December 2012, as of that date, there were no rights remaining under the Dealer Agreement. Therefore, as the Trustee had no rights, WCM's claim that the Trustee abandoned the rights under the Dealer Agreement so as to re-vest them in WCM is without merit.
- The Bankruptcy Court has made three rulings that the Dealer Agreement had terminated as of December 2012.
 - There is also ongoing litigation in Federal District Court between WCM and GM.

PROCEEDINGS IN THE U.S. FEDERAL DISTRICT COURT - CIVIL ACTION BETWEEN GM AND WCM:

- One of the claims of WCM in the District Court is that the Court should not act on GM's suit as there are administrative actions pending before the Board as the Dealer Agreement has not yet terminated.

- The District Court judge, in an interlocutory order dated April 13, 2015, referencing the Bankruptcy Court Orders, found that:
 - a. WCM is collaterally estopped from proceeding before the Board because WCM lost the termination issue in three separate proceedings before the Bankruptcy Court;
 - b. Only the Bankruptcy Trustee can pursue any claim of WCM;
 - c. The Trustee has no claims under the Dealer Agreement as it terminated in December 2012; and,
 - d. WCM lacks standing and thus the Board lacks jurisdiction to make any ruling on behalf of WCM.

THE ALJ'S FINDINGS:

- The ALJ has found that the Federal District Court's Order of April 13, 2015 accurately and comprehensively addresses the issues presently before the Board. The ALJ has incorporated and adopted the language of the District Court's Order into the Proposed Orders as to the matters presently before the Board.
- As to the Second Protest, it is undisputed that the second Protest is moot. WCM has agreed the Board has no jurisdiction to hear the second Protest and the second Protest should be dismissed.
- The ALJ has recommended GM's Motion to Dismiss the second Protest be granted and the second Protest be dismissed with prejudice.
- As to the first Protest, although WCM does not dispute any of the Bankruptcy Court's findings, WCM continues to claim before the Board that the Dealer Agreement has not been terminated.
- The ALJ, like the Bankruptcy Court and the Federal District Court, has found that the Dealer Agreement terminated in December 2012.
- In addition, as did the District Court, the ALJ found that:
 - a. WCM is collaterally estopped from proceeding before the Board because WCM lost the termination issue in three separate proceedings before the Bankruptcy Court;
 - b. Only the Bankruptcy Trustee can pursue any claim of WCM;
 - c. The Trustee has no claims under the Dealer Agreement as it terminated in December 2012; and,
 - d. WCM lacks standing and thus the Board lacks jurisdiction to make any ruling on behalf of WCM.

- The ALJ has recommended that both Protests be dismissed with prejudice. GM and WCM ceased being franchisor and franchisee as of December 2012, when the franchise terminated pursuant to the Board's Order of December 2010.

RELATED MATTERS:

- Related Case Law: There are no published court decisions involving the Board applicable to these protests.²
- Applicable Statutes and Regulations: Vehicle Code section 3060-3061

² There are a lot of court decisions and statutes applicable as they appear in the Bankruptcy Court orders and the District Court Order. They are Bankruptcy Code statutes and cases and Federal Court statutes and cases regarding procedure in civil actions.