



MEMO

To : EXECUTIVE COMMITTEE
GLENN STEVENS, CHAIR
RAMON ALVAREZ C., MEMBER

Date: May 9, 2016

From : WILLIAM G. BRENNAN
ROBIN PARKER

Subject: DISCUSSION OF STAFF RESPONSES TO CASE MANAGEMENT
INQUIRIES AND SUGGESTIONS AS A RESULT OF THE INDUSTRY
ROUNDTABLE

At the March 17, 2016 Industry Roundtable, a number of questions and suggestions were made regarding case management during the discussion on Board filings and statistics. The staff has been working on this and provides the following responses:

15-day and 60-day Notices of Termination Issued by the Same Franchisor:

The code and attorneys appearing before the Board refer to “15-day notices” and “60-day notices” of termination. These are the statutorily established times of when the termination may become effective; not the times within which a protest may be filed.

A 15-day notice may be issued only if one or more of the specified grounds indicated below exists otherwise the franchisor may issue only a 60-day notice of termination:

- (i) Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent shall not be unreasonably withheld.
- (ii) Misrepresentation by the franchisee in applying for the franchise.
- (iii) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.
- (iv) Any unfair business practice after written warning thereof.
- (v) Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle dealer or by order of the department.

Occasionally, a manufacturer or distributor will issue both a 15-day and a 60-day notice of termination to the same franchisee. A question was raised regarding what a dealer should

do when it receives both notices. Since there are different grounds for termination and time periods for both filing a protest and when the termination is effective, a dealer should file a protest for the 15-day and the 60-day notice. In all likelihood, these matters will be consolidated for purposes of hearing and if the second \$200 filing fee is a financial hardship, the Board will waive the fee.

Board Jurisdiction to Hear and Consider Motions for Summary Judgment:

A question was raised as to whether the Board has jurisdiction to consider motions for summary judgment. The Board has the inherent power to dismiss a protest without a hearing on the merits if the Board lacks jurisdiction over the parties or the protest. This may be due to the lack of a franchise or because the protest was not timely filed. The Board has the "...implied power to dismiss a protest where the undisputed facts demonstrate good cause for franchise termination as a matter of law and afford no basis for preventing termination of the franchise." (*Duarte & Witting, Inc. v. New Motor Vehicle Board* (2002) 104 Cal. App. 4th 626, 637) In *Duarte*, the franchise for Plymouth vehicles was being terminated as the franchisor had ceased production of the Plymouth line-make. The court viewed the dismissal motion as a summary proceeding in which good cause was established as a matter of law. (*Id.*)

In *David A. Gill, as the Trustee of the Estate of West Covina Motors, Inc., and West Covina Motors, Inc., dba Clippinger Chrysler Jeep Dodge Ram v. Chrysler Group, LLC* (PR-2376-13, PR-2377-13, PR-2378-13 and PR-2379-13), Respondent filed a Motion for Summary Judgment that was briefed and submitted after oral arguments. The parties settled the matter prior to the Order being issued. Each dispositive motion is handled on a case-by-case basis and assigned to the Designated Law and Motion ALJ. A Motion for Summary Judgment would be handled in the same fashion.

Law and Motion Hearings without Briefing:

A question was raised at the Roundtable about motions being ruled on without briefing by the parties. The legal staff tries to resolve all disputes in the most expeditious and efficient manner in keeping with the Board's Mission and Vision Statement. Oftentimes this includes informal resolution of disputes whether a formal motion is filed or not. Informal conference calls are set with the Designated Law and Motion ALJ or the assigned Merits ALJ to try to resolve a dispute prior to setting a formal schedule. If informal resolution is unsuccessful, then by stipulation of counsel or Board order, a briefing schedule and telephonic hearing date are set. Most formal motions, except those that are dispositive of a matter, are resolved in less than two weeks.

Since the Industry Roundtable, the following are several examples that illustrate how most case management disputes are resolved without the need for briefing or a telephonic hearing:

- During an informal conference call on March 9, 2016, ALJ Skrocki considered oral arguments on Respondent's Motion to Continue in *Hayward Nissan Corporation dba Hayward Nissan v. Nissan of North America, Inc.* (Protest Nos. PR-2374-13 and

PR-2381-13). Both parties submitted the matter without additional briefing and the motion was ultimately denied. This enabled the parties to proceed with the April 25, 2016, merits hearing (the matter settled on the first day).

- During an informal conference call on April 7, 2016, ALJ Ryerson resolved Respondent's request in *Hayward Nissan* for an extension of the deposition cutoff to allow the scheduling of depositions. The parties stipulated in writing to the parameters of the extension without briefing or a telephonic hearing.
- On April 11, 2016, during a Ruling on Objections in *Timmons Subaru* (Protest No. PR-2422-15), ALJ Skrocki resolved an outstanding substitution of counsel issue in *Timmons Subaru* and *Santa Cruz Nissan* (PR-2358-13). On the same day, ALJ Woodward Hagle resolved the joint request of counsel in *Santa Cruz Nissan* to a one month continuance of all dates including the April 20 in-person hearing. The hearing was taken off calendar and a conference call was set with the ALJ to follow-up on a pending buy-sell.
- During an informal conference on April 12, 2016, ALJ Skrocki resolved an outstanding substitution of counsel issue and Respondent's "Application to Enforce the Scheduling Order & Compel Depositions and Production of Documents" in *HC Automotive, Inc., dba Hooman Chrysler Jeep Dodge Ram v. Fiat Chrysler Automobiles* (PR-2429-15, PR-2430-15, PR-2431-15 and PR-2432-15). Protestant's oral motion to continue was also heard and denied. Respondent's request for sanctions requires a written motion and briefing (13 CCR § 551.21) but all other matters were resolved.

The exception to informal resolution is a dispositive motion such as a motion to dismiss. A record needs to be made, and a Proposed Decision issued and considered by the Board if the motion is granted.

All New Protests on the Board's website:

A request was made to have all new protests on the Board's website including the name of the case, the attorneys, and the status. Due to space and staffing constraints with the Board's website which is maintained by DMV, the staff created an internal Protest Mailing List. On March 30, 2016, an e-mail was sent to the Industry Roundtable and Public Mailing Lists indicating that the Board was creating an electronic mailing list for those that would like to receive copies of new protest. To date, 30 people have requested to be on the mailing list. When a protest is filed, the staff e-mails a conformed copy of the protest to the mailing list. Since the list was created, there have been seven new protests filed and e-mailed.

Decisions on Dispositive Motions on the Board's Website:

On April 1, 2016, a request was made by a Roundtable attendee to post Decisions on dispositive motions on the website. By April 18, 2016, the Board's website was updated with a searchable log of all such Decisions from 2000 to the present as well as a PDF of

each Decision (http://www.nmvb.ca.gov/dispositive/0-dispositive_motions_list.htm).

If you have any questions or comments, please contact me at (916) 324-6197 or Robin at (916) 323-1536. This matter is being agendized for information only at the June 28, 2016, General Meeting.