

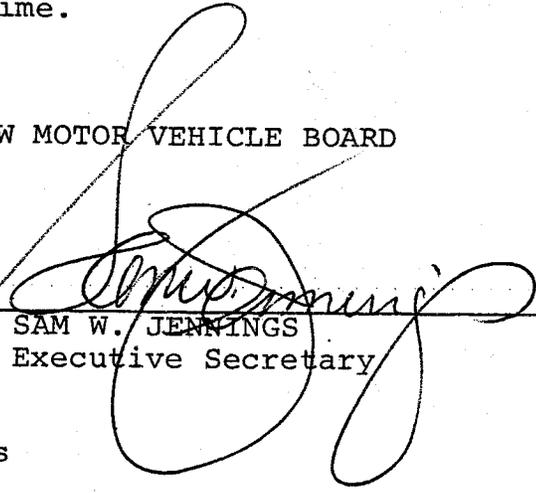
1401 - 21st Street, Suite 407
P. O. Box 31
Sacramento, California 95801
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

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In the Matter of the Appeal of)
BILL ELLIS FORD, a Corporation,) Appeal No. A-79-78
Appellant,)
vs.)
DEPARTMENT OF MOTOR VEHICLES,) ORDER FOR DISMISSAL
Respondent.)

TO: Richard R. Beswick, Attorney for Appellant:
The Board, at its meeting of July 12, 1978, in San Francisco, California, dismissed the above entitled appeal for failure to file the administrative record as required by the Board's regulations, section 571 of Title 13, Subchapter 2, Article 3, within a reasonable period of time.
Dated: July 17, 1978.

NEW MOTOR VEHICLE BOARD
By 
SAM W. JENNINGS
Executive Secretary

cc Department of Motor Vehicles

MMVB

FILED
DEPT. OF MOTOR VEHICLES
JUL 31 1978
BY *L. Hochman*

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

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In the Matter of the Accusation of)
BILL ELLIS FORD,)
A Corporation)

Respondent)

CASE NO. D-1832
ORDER IMPLEMENTING
DECISION

WHEREAS, on July 17, 1978, the New Motor Vehicle Board
in Appeal No. A-79-78 dismissed the Appeal in the above-entitled
matter;

NOW, THEREFORE, IT IS ORDERED that the Decision become
effective AUG 29 1978.

DATED 7-29-78

Doris V. Alexis
DORIS V. ALEXIS
Director

LAW OFFICES OF
HOLT, TAYLOR, McCORD & PAUL

78 NORTH ASH STREET
POST OFFICE BOX 1578, MAIN POST OFFICE
VENTURA, CALIFORNIA 93001

DON HOLT, JR.
RICHARD L. TAYLOR
ROBERT L. McCORD, JR.
RONALD S. PAUL

OF COUNSEL
DON R. HOLT

TELEPHONE
AREA CODE 805
VENTURA 643-8655
OXNARD 485-5341

October 10, 1978

Mr. Sam W. Jennings
Executive Secretary
New Motor Vehicle Board
PO Box 31
Sacramento, California 95801

FILED	
New Motor Vehicle Board	
Date	<u>10-13-78</u>
By	<u>C. Fraga</u>

Re: Fillmore Motors, Inc. v.
Department of Motor Vehicles
Appeal No. A-77-77

Fillmore Motors, Inc. v.
Department of Motor Vehicles
Appeal No. A-80-78

Fillmore Motors, Inc. v.
Department of Motor Vehicles
Appeal No. A-81-78

Dear Mr. Jennings:

Enclosed please find a copy of the fully executed stipulation and waiver in the above mentioned Fillmore Motors, Inc. cases.

Please consider this letter a formal request on behalf of Fillmore Motors, Inc., to withdraw both of the above appeals.

Thank you for your courtesy and cooperation in these matters.

Very truly yours,

Ronald S. Paul
RONALD S. PAUL

RSP/pka
enclosure

LAW OFFICES OF
HOLT, TAYLOR, McCORD & PAUL

78 NORTH ASH STREET
POST OFFICE BOX 1578, MAIN POST OFFICE
VENTURA, CALIFORNIA 93001

DON HOLT, JR.
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ROBERT L. McCORD, JR.
RONALD S. PAUL

OF COUNSEL
DON R. HOLT

TELEPHONE
AREA CODE 805
VENTURA 643-8655
OXNARD 485-5341

July 17, 1978

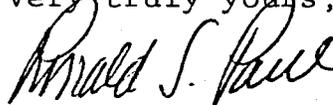
Sam W. Jennings,
Executive Secretary
New Motor Vehicle Board
P. O. Box 31
Sacramento, California 95801

Re: Fillmore Mortors, Inc. v.
Department of Motor Vehicles
Appeal No. A-81-78

Dear Mr. Jennings:

As I indicated to you in my letter of July 1, 1978, all appeals concerning Fillmore Motors have been settled. Alan Mateer of the Department of Motor Vehicles is in the process of preparing a settlement agreement. As soon as the paper work has been completed, I will immediately withdraw all appeals.

Very truly yours,



RONALD S. PAUL

RSP/pka

1401 - 21st Street, Suite 407
Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
LYONS BUICK OPEL GMC, INC., a)
Corporation,)
Appellant,)
vs.)
DEPARTMENT OF MOTOR VEHICLES,)
Respondent.)

Appeal No. A-82-78

ORDER FOR DISMISSAL

TO: Robert B. Packer, Esq., Attorney for Appellant
3435 Wilshire Boulevard, Suite 2600, Los Angeles, CA 90010

The Board, at its meeting of November 30, 1978, at San Francisco, California, dismissed the above entitled appeal for failure to serve the Department of Motor Vehicles with a copy of the Notice of Appeal and proof of service to the Board thereon as required by the Board's regulations contained in the California Administrative Code, Title 13, Subchapter 2, Article 3, section 570.

Dated: December 1, 1978.

NEW MOTOR VEHICLE BOARD

By


SAM W. JENNINGS
Executive Secretary

cc Department of Motor Vehicles

1401 - 21st Street, Suite 407
Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
)
VALLEYWOOD CHEVROLET, INC.,)
)
Appellant,) Appeal No. A-83-78
)
vs.) FILED: October 3, 1978
)
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)
)
Respondent.)
_____)

Time and Place of Hearing: 10:00 a.m., May 9, 1979
Santa Monica City Council
Chambers, City Hall
1685 Main Street
Santa Monica, CA 90401

For Appellant: Brian R. Silver
816 Brown Street
Napa, CA 94558

For Respondent: Nancy L. Rasmussen
P.O. Box 1828
Sacramento, CA 95809

FINAL ORDER

Valleywood Chevrolet, Inc., a corporation doing business in the State of California, enfranchised as a new car dealer, hereinafter referred to as "appellant", appealed to this board from a disciplinary action taken against its corporate license by the Department of Motor Vehicles following proceedings pursuant to Section 11500 et. seq. of the California Government Code.

The Director of Motor Vehicles, adopting the proposed decision of the hearing officer, found that:

- (1) On six separate occasions between the months of January and August of 1977, appellant advertised vehicles for sale at a given price in the Napa Register and, subsequently, sold those vehicles for an amount exceeding the advertised price without disclosing the advertised price to the purchaser.
- (2) Appellant included, as an added cost to the selling price of 18 separate vehicles, licensing or transfer fees in excess of the fees due and paid to the state.
- (3) During the period in which the advertised vehicles were sold at a price in excess of that advertised, appellant had no system whereby it was made known to individual salespersons that a vehicle had been advertised at a set price. Appellant sells approximately 1,000 vehicles per year and employs 40 people. The practice was for the sales manager to select vehicles from the inventory which he wished to advertise, and telephone the newspaper giving the vehicle identification and the price. No follow up was had to inform the salespersons. They were expected to learn of the vehicles advertised and their price from the Napa Register which would be available in the afternoon. Appellant has now corrected that procedure. Currently the proposed advertisements are discussed with the salespersons at a meeting before the advertisements appear. Tear sheets of the advertisement are given to each salesperson and no vehicle is to be sold over the advertised price.
- (4) The evidence did not establish that appellant had any intent not to sell the vehicles at the advertised price within the meaning of Section 11713(a), California Vehicle Code. The evidence did not establish that appellant refused to sell vehicles at the advertised price within the meaning of Section 11713.1(c), California Vehicle Code. The misrepresentation of the true selling price does constitute fraud within the broad meaning given that term by Section 11705, California Vehicle Code. The fact that the purchaser paid more than the advertised price resulted in a loss to the purchasers.

- (5) Licensing and transfer fees were determined by appellant's DMV clerk. All fees collected were promptly sent to the department. When a bundle sheet was returned indicating error, appellant's practice was to make refund to the customer at the end of the calendar quarter in which it received the refund from the department. This practice resulted in excessive delay in making refunds in some instances. The overcharges . . . were refunded to the customers during the period beginning September 14, 1977, and ending October 4, 1977. Appellant's current practice is to make refunds as soon as an apparent overcharge is discovered.

Pursuant to these findings, the Director of Motor Vehicles adopting the proposed decision of the hearing officer determined that:

- (1) Cause for discipline of appellant exists pursuant to Section 11705(a)(14), California Vehicle Code, and Section 11705(a)(10), California Vehicle Code, in conjunction with Section 11713(g) of said code.
- (2) No cause for discipline exists against appellant pursuant to Section 11705(a)(10), California Vehicle Code, in conjunction with Section 11713(a) or Section 11713.1(c) or Section 11713.1(a) of said code.

Based upon the above determinations of issues, the Director of Motor Vehicles issued the following order:

"The dealer's license and special plates heretofore issued to Valleywood Chevrolet, Inc., are hereby suspended for five (5) days provided, however, that the effectiveness of said order of suspension shall be stayed for a period of one (1) year from the effective date of this decision, during which time (appellant) shall be placed on probation to the Director of Motor Vehicles of the State of California upon the following terms and conditions:

(Appellant) shall obey all the laws of the State of California and all rules and regulations of the Department of Motor Vehicles governing the exercise of his privileges as a licensee.

If the Director of the Department of Motor Vehicles shall determine, after giving (appellant) notice and opportunity to be heard, that a violation of probation has occurred, the

Director may terminate the stay and impose the suspension or otherwise modify the order. In the event (appellant) shall faithfully keep the terms of the condition imposed for the period of one (1) year, the stay shall become permanent and (appellant) shall be fully restored to all licensed privileges."

Appellant raises three issues on appeal, as follows:

- (1) The evidence did not support the finding that Valleywood charged licensing and transfer fees in excess of the fees due and paid the state.
- (2) The finding that there was "excessive delay" in the refund of fees was beyond the scope of the accusation and was contrary to the evidence and the law.
- (3) The finding of misrepresentation and fraud is unsupported by any evidence whatsoever.

The decision of the Board is directed primarily toward the merits of appellant's first and third contentions.

Appellant stipulated at the hearing that the fees alledged in the accusation as the fees due the department were the amounts determined by the department to be the correct fees, but appellant disputed the accuracy of the computations. Appellant argues that the department failed to meet its burden of proof on the accusation of the alledged overcharges inasmuch as no evidence was introduced to show that the amounts determined by the department to be due were correct, nor was there any evidence to show that the amounts determined by Valleywood to be due were incorrect. The department replies that their investigator testified that he knew nothing which would indicate that the department's computations were incorrect. The department further argues that appellant introduced no evidence as to how it made its fee calculations,

nor any evidence whatsoever to support its argument that the department's figures were wrong. The department relies upon Evidence Code Section 664 to support its contention that the burden of proving the inaccuracy of the department's computations shifted to appellant. This section provides in relevant part "It is presumed that official duty has been regularly performed."

The Board agrees with appellant that this argument is contrary to the presumption of innocence that applies to every accusatory proceeding. Evidence Code Section 664 may not be used to establish the truth of facts upon which an allegation is based. The department sought to prove that Valleywood charged fees in excess of what were due and paid to the state. In so alledging it is not sufficient that the department simply compare its own computation of fees due to those computed by Valleywood, and demonstrate that Valleywood charged fees in excess of those determined to be due by the department, thereby shifting the burden of proving the inaccuracy of these computations to Valleywood. In order to support an accusation such as this, the department has a duty to prove that its computations were correct and that Valleywood's were in excess of the amount actually due. The department has introduced no such evidence to support the accuracy of its computation of the fees. The finding of the hearing officer that Valleywood charged fees in excess of those due and paid to the state is, therefore, not supported by the evidence.

Accordingly, the Board pursuant to Section 3054(d) of the Vehicle Code, determining that there is no evidence to support a violation of Section 11713(g), sets this finding aside.

In view of the Board's decision regarding appellant's first contention, it is unnecessary to consider appellant's second contention that the finding of "excessive delay" in the refund of fees was beyond the scope of the accusation and contrary to the evidence and the law.

With respect to appellant's third contention that the finding of misrepresentation and fraud is unsupported by any evidence whatsoever, appellant argues that in his proposed decision the administrative law judge found that Valleywood's advertising was not untrue, deceptive, or misleading, but then erroneously held that "the misrepresentation of the true selling price" constituted fraud within the provisions of Vehicle Code Section 11705(a)(14). Appellant argues that no misrepresentation was shown to have been made to the purchasers involved in these transactions. In fact, there was no evidence whatsoever concerning any representation which may have been made to these purchasers. The department apparently relies upon the inference that appellant's salesman told each purchaser the selling price and that appellant's representation that the selling price was "X" dollars was false when the advertised price was actually lower than "X". None of the six purchasers involved in these transactions were called to give testimony regarding any representations

made to them by appellant's salesmen, nor was any evidence introduced to show the nature of these transactions or the time frame in which they took place. It has not been established that any or each of these transactions occurred solely on the days that the advertisements were published, and it is, therefore, entirely possible that any representations which might have been made regarding the prices of these vehicles could have occurred prior to the effective date of the advertisements. In any event, the department has failed to carry its burden of proving a violation of Section 11705(a)(10) and Section 11705(a)(14). The hearing officer's determination that these vehicle code sections have been violated is not supported by the findings. The Board, therefore, pursuant to Section 3054(c) of the Vehicle Code sets these determinations aside.

For the above stated reasons, and pursuant to Vehicle Code Section 3055, the Board does not find sufficient evidence to support the findings of the Director. The decision of the Director of Motor Vehicles is hereby reversed in its entirety.

This Final Order shall become effective when served upon the parties.



FLORENCE S. POST
President
New Motor Vehicle Board

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

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6	WORTHINGTON FORD, INC.)	
7	A Corporation, dba)	APPEAL NO. A-84-78
8	WORTHINGTON FORD,)	
9)	
10	Appellant	)	STIPULATION, WAIVER
11	vs.)	
12		)	AND
13	DEPARTMENT OF MOTOR VEHICLES,)	
14		)	ORDER
15	Respondent)	
16)	
17)	

18 The Department of Motor Vehicles, hereinafter "Department"
19 and Worthington Ford, hereinafter "Worthington" stipulate as
20 follows:

21 1. On October 18, 1978 the Director of the Department
22 issued a Decision in this proceeding then entitled "In the
23 Matter of the Accusation Against: WORTHINGTON FORD, INC. A
24 Corporation, dba WORTHINGTON FORD" No. D-1754 to become
25 effective on December 5, 1978.

26 2. On or about December 4, 1978 Worthington filed with
27 the New Motor Vehicle Board a timely Notice of Appeal from said
28 Decision. The appeal is now pending before the New Motor
Vehicle Board.

3. Department and Worthington jointly move the new Motor
Vehicle Board to issue an order remanding this matter to the
Department, thereby giving the Department, jurisdiction

1 and authority to amend the Order in said Decision to read as
2 follows:

3 "WHEREFORE, THE FOLLOWING ORDER is hereby made:

4 The dealer's license and special plates
5 (D-2813) issued to respondent Worthington Ford,
6 Inc. is hereby suspended for a period of seven
7 days; provided, however, that all seven days of
8 said suspension are stayed for a period of one
9 year upon the following terms and conditions:

10 A. Respondent shall obey all laws of the
11 United States, the State of California and its
12 political subdivisions and the respondent shall
13 comply with the rules and regulations of the
14 Department of Motor Vehicles now or hereafter in
15 effect. In the event any of respondent's officers
16 or directors are convicted of a felony or of a
17 crime involving moral turpitude including a con-
18 viction following a plea of nolo contendere such
19 conviction may be considered a violation of this
20 condition.

21 B. Any license issued to respondent to do
22 business as Worthington Ford during the period
23 of this stay shall be issued as a probationary
24 license and then only if it is determined that
25 respondent has complied with all of the terms
26 and conditions of this order and that no cause
27 for refusal to issue or to suspend or revoke
28 such license has intervened or exists.

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C. Should the Director of the Department of Motor Vehicles at any time during the period of the stay determine upon evidence satisfactory to the Director that the respondent has violated any of the above terms or conditions then the Director may after providing respondent with notice and an opportunity to be heard set aside the stay and reimpose the stayed portion of the penalty or take such other action as the Director deems just and reasonable. Should respondent comply with the terms and conditions of the stay then at the end of the one year period the stay shall become permanent and respondent's license fully restored."

4. Department and Worthington further agree and stipulate that, upon remand of this matter to the Department and following amendment of the Order in said Decision as provided

/

1 hereinabove, they waive their rights in the matter to any and
2 all appeals and any and all rights which may be afforded
3 pursuant to the Vehicle Code or any other provisions of the law.

4 DATED 10-29-79 . *Doris V. Alexis*
5 DORIS V. ALEXIS, Director
6 Department of Motor Vehicles

7 DATED 10-26-79 . *Harry Towne*
8 HARRY TOWNE, Staff Counsel
9 Department of Motor Vehicles

10 DATED 10-22-79 . *Calvin Worthington*
11 CALVIN WORTHINGTON
12 President of Appellant

13 DATED Oct. 5, 1979 . *Henry Lewin*
14 HENRY LEWIN
15 Attorney for Appellant

16 ORDER

17 Pursuant to the joint motion of the Department and
18 Worthington, it is hereby ordered that the Decision of the
19 Department in the proceeding entitled "In the Matter of the
20 Accusation Against: WORTHINGTON FORD, INC. A Corporation, dba
21 WORTHINGTON FORD" No. D-1754 issued on October 18, 1978 be
22 remanded to the Department to take such action as is provided
23 in the Stipulation and Waiver herein.

24 DATED _____ . By _____

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ORIGINAL

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

FILED
DEPT. OF MOTOR VEHICLES
OCT 25 1978
BY *J. Munoz*

5 In the Matter of the Accusation of)
6 WORTHINGTON FORD, INC.,)
7 A Corporation, dba)
8 WORTHINGTON FORD,)
9 Respondent.)

CASE NO. D-1754

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DECISION

The Proposed Decision of the Administrative Law Judge, a copy of which is herewith served upon you and which has heretofore been filed as a public record as provided in the Government Code, Section 11517(b), is hereby adopted by the Director of Motor Vehicles of the State of California as her Decision in the above matter.

Pursuant to the provisions of Government Code Section 11519 and Vehicle Code Section 3052(d), the suspension herein ordered shall commence on DEC 05 1978.

IT IS SO ORDERED 10-18-78.

Doris V. Alexis
DORIS V. ALEXIS
Director

ORIGINAL

BEFORE THE DEPARTMENT OF MOTOR VEHICLES
OF THE STATE OF CALIFORNIA

FILED
DEPT. OF MOTOR VEHICLES
OCT 25 1978
BY *J. Munoz*

In the Matter of the Accusation of)	
WORTHINGTON FORD, INC.,)	CASE NO. D-1754
A Corporation, dba)	
WORTHINGTON FORD,)	L-11450
)	
Respondent.)	

PROPOSED DECISION

This matter came on regularly for hearing before John A. Willd, Administrative Law Judge with the Office of Administrative Hearings, at Los Angeles, California, on December 6, 1976, at the hour of 9:00 a.m. This matter was heard on that day and on December 7, 8, 9, and 10, 1976, June 14, 15, 16, and 17, 1977, July 25, 26, 27, 1977, December 6, 7, 8, 9, 12 and 15, 1977. The complainant was represented by Benjamin Bucceri, Counsel. The respondent was represented by its attorneys, Henry Lewin and Louis Gotenstein. Oral and documentary evidence was received as well as oral argument. At the conclusion of the proceedings submission was withheld in order to permit the receipt of written argument. Opening argument on behalf of the Department of Motor Vehicles was received February 17, 1978. Closing argument on behalf of respondent was received on May 5, 1978. A supplement to the closing argument of respondent was received on June 12, 1978 and closing argument on behalf of Department received on June 19, 1978. After due consideration of all of the evidence and all of the argument presented the Administrative Law Judge makes the following findings of fact:

I

J. G. Holmes is the Chief, Division of Compliance with the Department of Motor Vehicles and he made the Accusation and the Amendment to Accusation herein in his official capacity.

II

At all times herein mentioned respondent Worthington Ford, Inc. (hereafter Worthington Ford) has been and now is a California Corporation, doing business as Worthington Ford in the State of California, operating the business under a dealer's license and special plates (D-2813) issued by the Department of Motor Vehicles. Said license and special plates are in full force and effect.

III

Attached to the Accusation herein is Schedule A, which schedule

sets forth certain information with respect to twelve vehicles. Said Schedule A is incorporated herein by this reference and made a part hereof as though set forth in full.

IV

In connection with the sale of those vehicles listed as items 1b, 5b, 8b and 10b in Schedule A respondent through its agents fraudulently represented the vehicles as new vehicles instead of disclosing to the purchasers that the vehicles had been previously sold at retail and operated on the public highways and were used vehicles within the purview of Vehicle Code Section 665. It was not established that respondent misrepresented the used status of the vehicle identified in Schedule A as item 3b. The Accusation was dismissed with respect to the vehicle listed in Schedule A as item 7b.

V

In connection with the sale of those vehicles listed as items 2b, 9b, and 11b in Schedule A respondent fraudulently represented the vehicles to be dealer demonstrators instead of disclosing to the purchasers that the vehicles had been previously sold at retail and operated on the public highways. It was not established that there was any fraudulent representation with respect to the vehicle listed as item 1c in Schedule A. The Accusation was dismissed with respect to the vehicle identified as item 4b in Schedule A.

VI

In connection with the sale of the vehicle listed as item 6b in Schedule A it was not established that respondent fraudulently represented the vehicle to be a new vehicle instead of disclosing to the purchaser that the vehicle had been previously sold at retail.

VII

Respondent held for sale those vehicles listed as items 1b and 1c in Schedule A without displaying either the assigned license plates or the assigned operating copy of the report of sale. The Accusation was dismissed with respect to item 7b in Schedule A.

VIII

Respondent included as an added cost to the selling price of the vehicles identified as items 1b, 1c and 2b in Schedule A licensing or transfer fees which were in excess of the fees due and paid to the state as follows:

<u>ITEMS</u>	<u>FEEES DUE DEPARTMENT</u>	<u>FEEES CHARGED PURCHASER</u>	<u>EXCESS</u>
1b	\$6.00	\$51.00	\$45.00
1c	\$6.00	\$54.00	\$48.00
1c	\$3.00	\$53.00	\$50.00

With respect to the purchase made by Mr. Robinson (item 1b) and the purchase made by Mr. Vargas (item 1c) the respondent did refund the excess charged as soon as this violation was brought to respondent's attention. With respect to the Fisher transaction (item 2b) respondent has failed to refund the excess charge of \$50.00 and this failure is in part based upon respondent's good faith belief that the funds should not be returned and also in part based upon some advice received by respondent from an investigator with the department. With respect to the Fisher transaction, respondent did in fact return the licensing or transfer fee to the original purchaser of that vehicle and by subsequently collecting a similar fee from Mr. Fisher respondent's employees take the position that respondent is able to recoup this loss.

IX

In connection with the sale of the vehicle listed as item 4a in Schedule A respondent did cause the purchaser to suffer some modest lost and damage by reason of fraudulent representations in that respondent did falsely represent to the purchaser the vehicle which she purchased was an eight cylinder vehicle when in truth and in fact the vehicle was a six cylinder vehicle. This transaction involves a Ms. Hosey who wished to purchase and who paid for an eight cylinder vehicle. She came to respondent's place of business, selected a vehicle and stated that she would return when she had obtained the money to purchase the vehicle. She returned a few days later to pick up and pay for the vehicle she had selected. She later learned that the vehicle she had received had only six cylinders. It is frankly difficult to accept the fact that respondent's employees who processed this sale were unaware that the vehicle possessed six cylinders rather than eight, at the very least it is an example of gross negligence. When this mistake was thereafter brought to the attention of one of respondent's employees this employee initially suggested that Ms. Hosey should keep the car because she would be better off with a six cylinder automobile. Ms. Hosey did contact an attorney and all of her money was promptly returned.

X

In connection with the sale of that vehicle described as item 12 in Schedule A respondent falsely represented to the purchaser that the vehicle was a 1973 year model Datsun but in truth and in fact said vehicle was a 1972 year model Datsun. The representation in this instance is found to be grossly negligent rather than intentional.

Apparently there is no observable difference between a 1972 and 1973 Datsun pick up truck and the model year is not identified in any manner in the serial number. This problem, however, places respondent under an even greater duty to be sure that the model year is identified and correctly represented to any customer.

XI

In connection with the sale of the vehicle to Raymond Robinson (item lb) it was not established that respondent obtained Robinson's signature on a conditional sales contract at a time when the contract contained blank spaces which were filled in after Robinson signed the contract.

XII

Schedules B and C are attached to the Amendment to Accusation and are incorporated therein by this reference as though set forth in full and made a part hereof.

XIII

The allegations set forth in paragraph XIII in the Amendment to Accusation were not established by a preponderance of the evidence.

XIV

The allegations set forth in paragraph XIV of the Amendment to Accusation were not established by a preponderance of the evidence. This paragraph suggests that respondent failed to honor certain ten day trial exchange warranties. It is noted that with respect to Mr. Kowalcyn he did experience some difficulty and some delay before he was successful in exchanging a vehicle and before he was successful in exchanging the second vehicle for the original vehicle. The proof, however, was far short of establishing that respondent did not intend to honor the exchange warranty.

XV

In connection with the sale of the vehicle to Mr. Kowalcyn (item 1a, Schedule B), respondent caused the purchaser to suffer loss and damage by reason of fraudulent representations in that respondent: (1) Refused to return a \$100.00 cash down payment and apply this sum to the purchase of the vehicle listed as item 1a in Schedule B after said sum was used as a cash down payment on the sale of that vehicle listed as item 1b in Schedule B. Mr. Kowalcyn originally purchased vehicle 1a in Schedule B. He exercised the ten day trial exchange privilege and purchased vehicle 1b in Schedule B. At this time he was required to put in an additional \$100.00 as down payment. Subsequently Mr. Kowalcyn again exercised the ten day trial exchange and returned this second vehicle for the first vehicle he had selected. In this final transaction he was not given credit for the additional \$100.00 cash down payment. (2) Mr. Kowalcyn was charged the sum of \$175.00 for documentary fees and warranty fees over and above the original agreed upon purchase price of \$2,195.00, at the time that

Mr. Kowalcyn finally purchased the vehicle listed as item 1a in Schedule B.

XVI

Respondent through its president appearing in various television commercials did represent to the public that certain items would be given to individuals who came to respondent's place of business and who ultimately purchased a vehicle. Mr. Kowalcyn did observe a commercial wherein the president of respondent offered 5,000 blue chip stamps to prospective customers who came to respondent's place of business and who ultimately purchased a vehicle. Mr. Kowalcyn failed to receive 5,000 blue chip stamps although he requested these stamps at the time he made his final purchase. It is not true, however, that respondent had no intention of providing any purchaser with 5,000 blue chip stamps at least during the period that this gift was being offered. Actually the 5,000 blue chip stamps are a very modest gift and stamps have been given to numerous individuals who went to respondent's place of business.

XVII

In connection with the transaction involving Mr. Kowalcyn (items 1a and 1b, Schedule B) respondent did cause Mr. Kowalcyn to suffer loss by reason of a deceitful practice in that Mr. Kowalcyn did come to respondent's place of business by virtue of a television advertisement wherein 5,000 blue chip stamps were offered to individuals who came to respondent's place of business and who ultimately purchased a vehicle. Mr. Kowalcyn did purchase a vehicle, he did request 5,000 blue chip stamps but for some reason respondent's employees made an assortment of excuses and failed to provide the requested stamps. It is possible that stamps were not given at this period of time but instead some other gift, if so, no employee offered that explanation to Mr. Kowalcyn. It is also possible that some of the employees were having some sport with Mr. Kowalcyn who was perhaps somewhat gullible as well as troublesome. In any event, Mr. Kowalcyn was eligible for the free 5,000 blue chip stamps, he did request them and his request was not honored, nor was he given any valid explanation as to why he was not given the requested stamps.

XVIII

With respect to the sale of the second vehicle purchased by Mr. Kowalcyn (item 1b, Schedule B) there was one license plate which was missing. It was not established that the operating copy of the report of sale was not displayed or at least available. Actually Mr. Kowalcyn kept this vehicle for only a brief period of time. It was returned and he again took the vehicle that he had originally selected.

XIX

In connection with the sale of the vehicle listed as item 2 in Schedule B respondent fraudulently represented to the purchaser

Mr. Rottschafer that the vehicle had been used by executives of Ford Motor Company. Respondent did not disclose to this purchaser that the vehicle had in fact been previously sold at retail to Budget Rent-A-Car and operated on the public highways.

XX

The facts alleged in paragraph XX of the Amendment to Accusation were not established by a preponderance of the evidence.

XXI

In connection with the sale of the vehicle listed as item 2 in Schedule B respondent did cause to be executed a conditional sales contract or purchase order which did not contain all the agreements of the buyer and the seller in that the conditional sales contract contained a charge for documents which was not agreed to by the purchaser.

XXII

The allegations set forth in paragraphs XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII and XXIX were dismissed on motion of the Department.

XXIII

In connection with the sale of the vehicle listed as item 5 in Schedule B respondent caused to be executed a conditional sales contract which did not contain all of the agreements of the buyer and seller in that the conditional sales contract reflected that: (1) The trade in vehicle of Mrs. Darnell would constitute a payment of \$1,400.00; when in truth and in fact Mrs. Darnell and one of respondent's agents had agreed that the vehicle would be valued at \$1,500.00. (2) It was not established that the price of the vehicle would be at any figure other than \$6,839.00 exclusive of sales tax. (3) A sum of \$175.00 was charged for document fees and warranty when in truth and in fact the purchaser and one of respondent's agents had agreed to the sum of \$150.00 for the document fees and warranty.

XXIV

It was not established that respondent or any of his agents represented to Mrs. Darnell that a \$600.00 discount would be given on the price of any 1975 model new car.

XXV

In connection with the sale of the vehicle listed as item 5 in Schedule B (Darnell) respondent's agent did cause the purchaser to suffer loss and damage by reason of fraud and deceit in that: (1) the customer was charged \$25.00 for a document fee which fee had not previously been agreed to by the purchaser and the seller. (2) Respondent allowed the purchaser \$1400.00 on a trade in as the down payment

on said vehicle when in truth and in fact the purchaser and respondent had agreed that the down payment for trade in purposes was to be valued at \$1,500.00. It was not established that respondent fraudulently represented that a \$600.00 discount would be given Mrs. Darnell on the price of the vehicle which she purchased. It was not established that respondent charged Mrs. Darnell the price of \$6,839.00 for the vehicle exclusive of taxes, fees and charges where the prior agreement of the parties was that the vehicle was to be sold for \$6,239.00.

XXVI

During the month of December 1975 respondent advertised numerous vehicles through various television commercials which commercials were broadcast from television stations covering the Los Angeles and Southern California area. Paragraphs XXXIV, XXXV, XXXVI, XXXVII and XXXVIII of the Amendment to Accusation allege conduct which the Department contends is in violation of certain provisions of Title 13 of the California Administrative Code. These particular provisions, however, now been repealed by the Director of the Department of Motor Vehicles and while the Director obviously intends to enact new regulations in this area, such regulations have not been promulgated. At the present time a temporary restraining order is in effect which enjoins the Director in this regard. In addition, it should be noted the Department's evidence concerning the advertising violations was frankly minimal and it is therefore quite doubtful that a violation would have been established in any event.

XXVII

Respondent Worthington Ford, Inc. has become extremely successful in selling new and used vehicles and this success is very closely related to the personal appeal of Mr. Calvin Worthington the president of respondent corporation. Mr. Worthington and others in the organization have established a very effective sales organization. When interested customers come to the Worthington Ford facility inquiry is made as to whether the customer is interested in the purchase of a new or used vehicle. Depending upon what answer is given the customer is directed to a portion of the facility where the customer is met by a greeter. This greeter is an automobile salesperson who shows the customer the available automobiles and when the customer becomes particularly interested in a certain vehicle then the customer is taken to a second automobile salesperson and this second individual has been variously described as sales manager, closer, turn over man or TO man. This second individual usually supervises four or five greeters and the closer negotiates the terms of the prospective sale including price of the vehicle and the amount permitted on a trade in. The customer is next taken to an individual described as a credit manager who reduces to writing that agreement previously reached between the customer and the closer. Supervising all of these individuals, as well as other employees of the organization, is the general sales manager who oversees the daily operations of the firm but rarely becomes involved in any specific sale. Exercising overall direction is

Mr. Calvin Worthington the president. All of the salespeople are required to attend regularly conducted sales meetings. Prior to the sales meeting the general manager will select certain vehicles which will be advertised on television during a specific period of time. The salespeople will be advised during the sales meetings of just what vehicles will be advertised. The advertised vehicles are to be kept in a certain location and the salespeople are instructed to sell the advertised cars to those customers who desire them. Numerous other topics are regularly covered during these sales meetings including what prizes or gifts are being given away and what the customers must do in order to qualify for a particular item. Lectures regarding effective salesmanship are presented and various problems with the service department or the front office might be covered. At many of these sales meetings the greeters and the closers are urged to be honest with customers at all times. The salespeople are also told to apprise management if any promises are made to a particular customer.

XXVIII

Respondent does have a program which is designed to bring customer complaints to the attention of top management. After a vehicle has been purchased from respondent there is subsequent correspondence from respondent to the customer and a gift of some sort is often enclosed. The customer receives a questionnaire which should uncover any complaints that the customer has. As of the time of the hearing respondent would receive back approximately 400 questionnaires each month. The overwhelming majority of these questionnaires indicated that the customers were happy with the treatment that they had received from respondent's employees. There are, of course, a certain number of complaints and where the complaints appear to be justified respondent does take steps to remedy these problems.

XXIX

Respondent cites several cases which indicate that the burden of proof in an administrative proceeding is "convincing proof to a reasonable certainty". Where the courts have approved this standard there appears to be some form of a fiduciary relationship between the licensee and some member of the public. While salesmen and dealers licensed by the Department of Motor Vehicles are under an obligation to deal fairly with their customers there is no fiduciary relationship established. It may be that the courts one day will impose a greater burden. However, the burden applied in this case is "preponderance of the evidence."

XXX

Respondent objected to the admission of any documents in this proceeding obtained by Department investigators other than copies

of the reports of sale. In this instance the Department investigators requested business records and they were convinced at that time that the Department was legally entitled to examine those records upon demand. The Department had long and consistently held the view that licensees must make these records available upon reasonable demand. Respondent's general manager did at the outset refuse to present these business records. The denial in this case, however, was more of form than of substance. When the investigators insisted that the business records be made available the general manager complied without further objection. Further, it does appear that the Department could have obtained those business records by court order had it sought to do so. From examination of all of the circumstances it does not appear that the Department acted unlawfully in obtaining all of the business records of respondent.

XXXI

Respondent urges that it is not responsible for any possible misconduct on the part of the various salesman. This contention is rejected. The various salesman are employees of respondent and with respect to the sale of automobiles they are certainly acting within the scope of their employment. The various salespeople involved might also be accountable to the Department of Motor Vehicles, but in any event respondent does share a responsibility to the public with its licensed employees. That responsibility is not necessarily equal with the employee and that responsibility may in part be met by prudent and diligent supervision. The possible discipline to be faced by respondent must depend upon the particular facts of each violation.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Respondent has in one instance violated Section 2982(a) of the Civil Code. Respondent has also violated in one or more instances Section 5202, 11713(a), 11713(d), 11713(g), 11713.1(c), 11713.5(a), 11705(a)(8), 11705(a)(10), 11705(a)(12) and 11705(a)(14) of the Vehicle Code. The Department is authorized to impose disciplinary action pursuant to the authority of Section 11705(a) of the Vehicle Code.

II

The allegations regarding the vehicles identified as 3b and 7b in Schedule A attached to the Accusation are dismissed. The allegations set forth in paragraphs VI, XI, XIII, XVI, XVIII, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXXI, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII and XXXIX of the Accusation and Amendment to Accusation are dismissed.

III

The facts established by respondent have been considered in making the order herein set forth. It is noted that respondent has more recently modified its advertising practices with respect to vehicles which have once been registered for a brief period of time. It is also apparent that respondent does encourage its employees to deal honestly with customers and with the dealership at all times; but respondent's efforts in this area should be improved. There have been instances where salespeople in the employ of respondent have gone beyond the bounds of acceptable behavior when dealing with customers.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The dealer's license and special plates (D-2813) issued to respondent Worthington Ford, Inc. is hereby suspended for a period of seven days; provided, however, that six days of said suspension are stayed for a period of two years upon the following terms and conditions:

A. Respondent shall serve the one day unstayed portion of the suspension which date shall be set by the Director of the Department of Motor Vehicles and the date selected shall be within fifteen days following the effective date of this decision. During the one day suspension respondent may operate its service department and the management office may remain open. However, no new or used vehicles may be sold or traded by respondent or its employees and no negotiations for the future sale or trade of motor vehicles may be conducted.

B. The respondent shall obey all laws of the United States, the State of California and its political subdivisions and the respondent shall comply with the rules and regulations of the Department of Motor Vehicles now or hereafter in effect. In the event any of respondent's officers or directors are convicted of a felony or of a crime involving moral turpitude including a conviction following a plea of nolo contendere such conviction may be considered a violation of this condition.

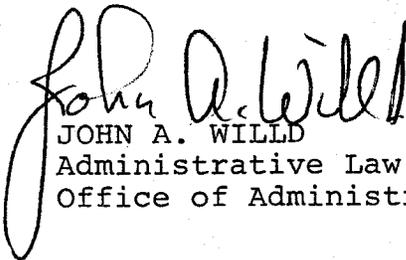
C. Any license issued to respondent to do business as Worthington Ford during the period of this stay shall be issued as a probationary license and then only if it is determined that respondent has complied with all of the terms and conditions of this order and that no cause for refusal to issue or to suspend or revoke such license has intervened or exists.

D. Should the Director of the Department of Motor Vehicles at any time during the period of the stay determine upon evidence satisfactory to the Director that the respondent has violated any

of the above terms or conditions then the Director may after providing respondent with notice and an opportunity to be heard set aside the stay and reimpose the stayed portion of the penalty or take such other action as the Director deems just and reasonable. Should respondent comply with the terms and conditions of the stay then at the end of the two year period the stay shall become permanent and respondent's license fully restored.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on the above dates, at Los Angeles, California, and recommend its adoption as the decision of the Department of Motor Vehicles.

DATED: 9-29-78



JOHN A. WILLD

Administrative Law Judge
Office of Administrative Hearings

JAW:mh

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of
POMONA CHRYSLER-PLYMOUTH, INC.,)
Appellant,) Appeal No. A-85-79
FILED: March 27, 1980

vs.

DEPARTMENT OF MOTOR VEHICLES OF
THE STATE OF CALIFORNIA,)
Respondent.

Time and Place of Hearing: 10:15 a.m., March 27, 1980
9901 La Cienega Boulevard
Pilot's Room
Los Angeles, CA 90045

Appellant: Lewis W. Boies, Jr.
Boies and O'Rourke
11777 San Vicente Boulevard
Suite 777
Los Angeles, CA 90049

Respondent: Doris N. Jaffe, Staff Counsel
Department of Motor Vehicles
Legal Office
3500 South Hope Street
Room 236
Los Angeles, CA 90007

FINAL ORDER

Pomona Chrysler-Plymouth, Inc., a California corporation
enfranchised as a new car dealer, hereinafter referred to as
appellant, appealed to this Board from a disciplinary action
taken against its license by the Department of Motor Vehicles

following proceedings pursuant to section 11500 et. seq. of the California Government Code.

The Director of Motor Vehicles, adopting the proposed decision of the Administrative Law Judge, found that:

Appellant included, as an added cost to the selling price of the vehicles, fees in excess of the fees due and paid to the state on eight separate instances.

In connection with the sale of four separate vehicles appellant fraudulently represented the vehicles as new vehicles. Appellant did not disclose to the purchasers that the vehicles had been previously sold at retail and operated on the public highways and were therefore used vehicles within the purview of Vehicle Code section 665. Appellant's fraudulent representations caused the purchasers to suffer loss or damage.

On three separate occasions, appellant sold vehicles for prices which exceeded the advertised prices of those vehicles as they appeared in newspaper ads.

Appellant advertised a free "CB Radio 23 channel transceiver with the purchase of a new van" which advertisement was false or misleading, and which was known or should have been known to be false or misleading, in that in connection with the sale of five separate vehicles free CB radios were not included with the purchased vehicles.

(5) Appellant advertised a vehicle for sale more than 48 hours after the vehicle had been sold. The advertising of this particular vehicle was clearly through inadvertence on the part of either appellant's sales manager or personnel of the newspaper where the ad appeared. Therefore, it was

determined that there was not sufficient cause for imposition a penalty.

(6) It was not established that in connection with the of one vehicle, appellant failed to return the down payment without demand when the buyer was unable to secure a loan on conditions stated in the sales contract. The buyer was in of a vehicle and purchased a less costly one when he was unable to finance his first choice. The down payment was applied to the purchase of the second vehicle. (Paragraph 7 below)

(7) It was not established that in connection with the of one vehicle appellant caused the purchaser to suffer loss or damage by reason of fraud or deceit, in that it was not established that appellant unduly influenced the purchaser to contract for and take delivery of the vehicle after fraudulently representing to the purchaser that the rescission of the purchaser's earlier contract would result in the loss of all or of the purchaser's down payment unless the down payment applied toward the purchase of another vehicle.

(8) Appellant, by and through its salesmen, fraudulently represented a vehicle to be a dealer demonstrator instead of disclosing to the purchaser that the vehicle had previously been sold at retail and operated on the public highways. Had the purchaser known that the vehicle was not new, she would not have purchased it

(9) Instead of reporting the sale of a vehicle properly, appellant, by and through its agents, altered the vehicle

identification number on the Report of Sale Used Vehicle and used the Report of Sale to report the sale of a different vehicle, thereby avoiding the registration fees due pursuant to Vehicle Code sections 4456(c)(2) and 9250; evading the weight fees due pursuant to Vehicle Code sections 4456(c)(2) and 9400; evading the license fees due pursuant to Vehicle Code section 4456(c)(2) and Revenue and Taxation Code sections 10751, et seq.

(10) In connection with the sale of a vehicle, appellant, by and through its agents altered the Report of Sale Used Vehicle to reflect a false date of sale thereby unlawfully evading administrative service fees due pursuant to Vehicle Code sections 4456.1(a) and 4456.1(c)(1); unlawfully evading registration fee penalties due pursuant to Vehicle Code sections 4456(c)(2), 9552, 9553, and 9554; unlawfully evading weight fee penalties due pursuant to Vehicle Code sections 4456(c)(2), 9552, 9553, and 9554; and unlawfully evading license fee penalties due pursuant to Vehicle Code section 4456(c)(2) and Revenue and Taxation Code sections 10853, and 18054.

(11 Appellant presently has one of the lowest complaint ratios among the Chrysler-Plymouth dealers in Southern California, Arizona, and Nevada. Appellant employs 23 salespersons and 80 additional employees. The sales people are paid on commission based on the gross sale of each vehicle. The evidence indicates that a good portion of the violations herein described resulted from avarice on the part of the sales personnel. The owner and sole shareholder of the appellant corporation may not have knowingly

permitted these violations, and full restitution has been made by appellant in the form of money and CB radios.

(12) The evidence demonstrates sincere and effective efforts by appellant to prevent future reoccurrences of violations. Appellant has completely reorganized the sales procedure for rollback vehicles. Each vehicle in stock is photographed, each ad is posted in a conspicuous location in the dealership and the managers take positive action to make the sales personnel aware of all advertisements. Moreover, appellant has retained the professional services of an independent firm which regularly audits and advises appellant's employees in the conduct of the licensed business.

The Director, adopting the proposed decision of the Administrative Law Judge, imposed a penalty of 123 days suspension (with all suspensions running concurrently amounting to a total of thirty (30) days suspension). However, the order of suspension was to be stayed for a period of two (2) years from the effective date of the decision, during which time the appellant was to be placed on probation to the Director, subject to certain terms and conditions including the suspension of the dealer's license and special plates for a period of three (3) days.

Appellant raises five issues on appeal, as follows:

1. The Department has proceeded without and in excess of its jurisdiction;
2. The Department has proceeded in a manner contrary to law;

3. The decision is not supported by the findings;
4. The findings are not supported by the weight of the evidence in the light of the whole record, viewed in its entirety, including relevant evidence adduced at the hearing of the Board;
5. The determination or penalty as provided in the decision of the Department, is not comensurate with the findings.

Having reviewed the record, and having heard oral arguments from both sides regarding the accusation, the findings, and the imposition of a penalty, the Board is impressed with two significant circumstances bearing upon this case. In the first instance, it is clear that sufficient ambiguity exists regarding the fees to be charged pursuant to the sale of rollback vehicles to cause the Board to believe that any overcharging may well have been the result of mere inadvertance or confusion on the part of appellant's personnel. Indeed, the Department acknowledges that ambiguities existed regarding the appropriate amounts to be charged on the sale of rollback vehicles, but argues that a memo was issued which purportedly clarified this situation prior to the violations described in this action. Such argument is not persuasive in light of the continued uncertainty regarding this issue evidenced at the oral arguments before the Board. The Department has been unable to state with clarity the proper procedure for charging fees on the sale of rollback vehicles, and it has been unable to state with certainty whether or not such overcharges, when discovered, were promptly returned to the dealership for purposes of enabling the dealership to reimburse

customers. Appellant claims not to have been reimbursed by the Department for the fees which it overcharged customers and yet claims to have reimbursed all customers involved after being provided with a list of such customers by the Department. The Department offers no rebuttal to this contention other than to argue the unreasonableness of a seven month delay in returning the

to customers. In view of the rather confused and apparently fluctuating state of the information available to appellant regarding

to be charged on rollback vehicles, it may well have been excusable for appellant to postpone returning fees until it was either reimbursed by the Department or provided with specific instructions regarding the amount to be returned to specific customers.

Secondly, as the Administrative Law Judge notes in her proposed decision which has been adopted by the Director, appellant has been in the retail automobile industry for approximately 28 years without disciplinary action prior to

filing of this accusation. In addition, appellant has one of the lowest complaint ratios of Chrysler-Plymouth dealerships in Southern California. In spite of the Department's contention

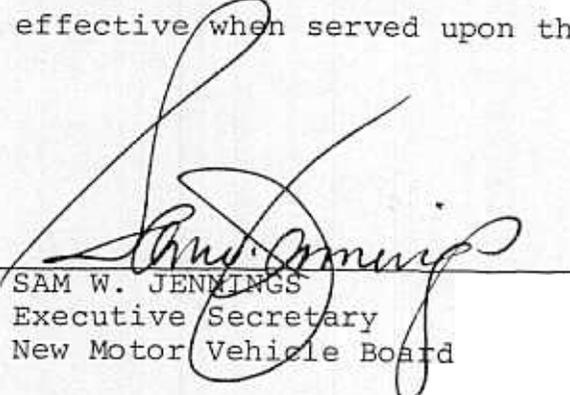
the investigation which led to this accusation resulted from a large volume of complaints being filed with the Department against appellant, the Department has been unable to produce any concrete evidence regarding any of these complaints. In fact, the Department has been unable to state with certainty whether any such complaints filed with the Department are even the subject of this disciplinary action.

Administrative Law Judge has found that a good portion of the violations which are the subject of this disciplinary action resulted from avarice on the part of the sales personnel and that the owner and sole shareholder of the appellant corporation may not have knowingly permitted these violations. While the Board acknowledges that appellant may not escape liability for its actions by claiming ignorance or inadvertance, the Board agrees with the Administrative Law Judge that the evidence has demonstrated sincere and effective efforts by appellant to prevent future reoccurrences of violations. The Board notes that appellant has taken specific corrective action including reorganizing the sales procedure on rollbacks, improving the procedure whereby sales personnel are made aware of advertisements, and retaining the professional services of an independent firm to audit and advise appellant's employees in the conduct of its business

In view of its position on the above issues, and the record in its entirety, the Board finds that while there is sufficient evidence of wrongdoing to warrant the imposition of a penalty, the mitigating circumstances described above, and the record, justify modification of the penalty imposed.

The decision appealed from is hereby modified to the extent that the condition requiring three (3) days suspension of appellant's dealer's license and special plates is eliminated.

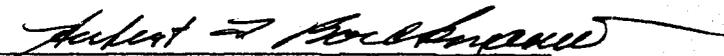
Final Order shall become effective when served upon the parties.



SAM W. JENNINGS
Executive Secretary
New Motor Vehicle Board



I hereby approve of the FINAL ORDER, filed March 27, 1980, by the New Motor Vehicle Board, in the matter of POMONA CHRYSLER-PLYMOUTH, INC. vs. DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA, Appeal No. A-85-79. By such approval I authorize Sam W. Jennings, Executive Secretary of the New Motor Vehicle Board, to sign the FINAL ORDER.


HERBERT F. BOECKMANN, II
Member
New Motor Vehicle Board

NEW MOTOR VEHICLE BOARD

1401 - 21st Street
Suite 407
Sacramento, CA 95814
(916) 445-1888



I hereby approve of the FINAL ORDER, filed March 27, 1980, by the New Motor Vehicle Board, in the matter of POMONA CHRYSLER-PLYMOUTH, INC. vs. DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA, Appeal No. A-85-79. By such approval I authorize Sam W. Jennings, Executive Secretary of the New Motor Vehicle Board, to sign the FINAL ORDER.



JOHN B. VANDENBERG
Member
New Motor Vehicle Board

NEW MOTOR VEHICLE BOARD

1401 - 21st Street
Suite 407
Sacramento, CA 95814
(916) 445-1888



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A handwritten signature in cursive script that reads "Elvira Arman-Reed".

ELVIRA ARMAN-REED

Member

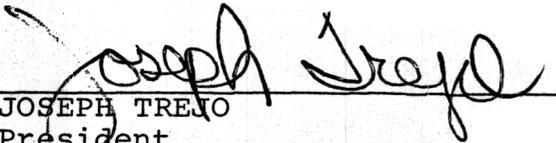
New Motor Vehicle Board

NEW MOTOR VEHICLE BOARD

1401 - 21st Street
Suite 407
Sacramento, CA 95814
(916) 445-1888



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JOSEPH TREJO
President
New Motor Vehicle Board

NEW MOTOR VEHICLE BOARD

1401 - 21st Street
Suite 407
Sacramento, CA 95814
(916) 445-1888



I hereby approve of the FINAL ORDER, filed March 27, 1980, by the New Motor Vehicle Board, in the matter of POMONA CHRYSLER-PLYMOUTH, INC. vs. DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA, Appeal No. A-85-79. By such approval I authorize Sam W. Jennings, Executive Secretary of the New Motor Vehicle Board, to sign the FINAL ORDER.

A handwritten signature in cursive script that reads "Florence S. Post". The signature is written in dark ink and is positioned above a horizontal line.

FLORENCE S. POST
Member
New Motor Vehicle Board

NEW MOTOR VEHICLE BOARD

1401 - 21st Street
Suite 407
Sacramento, CA 95814
(916) 445-1888



A-86-79

July 3, 1979

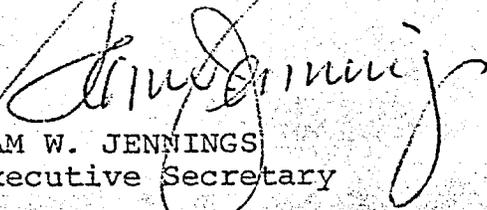
Bernard W. Minsky
Attorney at Law
22nd Floor
700 South Flower Street
Los Angeles, CA 90017

Re: The Attempted Appeal of Allan Jack Risley, dba
Risley Motors

Dear Mr. Minsky:

The attached document entitled IN THE MATTER OF THE
ACCUSATION OF ALLAN JACK RISLEY, dba RISLEY MOTORS,
APPEAL, is hereby returned. Vehicle Code section
3050(b) limits the Board's jurisdiction to hear and
consider appeals presented by an applicant for, or
holder of, a license as a new motor vehicle dealer.

Very truly yours,


SAM W. JENNINGS
Executive Secretary

SWJ:jb

Enclosure

cc: Harry Towne, Staff Counsel, DMV

NEW MOTOR VEHICLE BOARD

1401 - 21st Street
Suite 407
Sacramento, CA 95814
(916) 445-1888



A-87-79

September 6, 1979

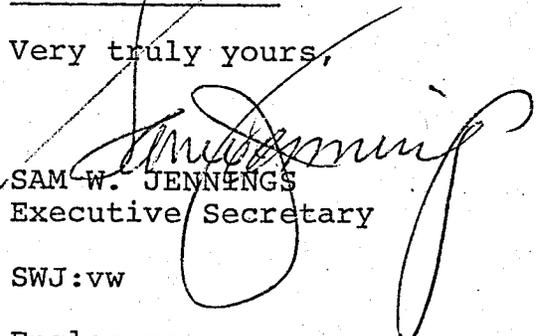
Bernard W. Minsky
Attorney at Law
22nd Floor
700 South Flower Street
Los Angeles, CA 90017

Re: The Attempted Appeal of City Motors, Inc. and Larry
Charles Johnson, dba Western Motors
Appeal No. A-87-79

Dear Mr. Minsky:

The attached document entitled IN THE MATTER OF THE ACCUSATION OF CITY MOTORS, INCORPORATED, A CORPORATION, Appeal No. A-87-79, is hereby returned. Vehicle Code section 3050(b) limits the Board's jurisdiction to hear and consider appeals presented by an applicant for, or holder of, a license as a new motor vehicle dealer.

Very truly yours,


SAM W. JENNINGS
Executive Secretary

SWJ:vw

Enclosure

cc: Harry Towne, Staff Counsel, DMV
Leo Bingham

WRIGHT BRITTON CODER TUEL & PIERUCCI

Attorneys

3190 Clearview Way, Suite 210

San Mateo, California 94402

(415) 349-0101

Harold C. Wright

John A. Britton

Michael G. Coder

Houston N. Tuel, Jr.

Ernest S. Pierucci

Sacramento Office

2100 Marconi Ave.

Sacramento, CA. 95821

(916) 922-9352

December 6, 1979

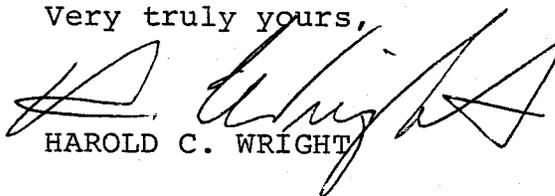
Sam W. Jennings, Esq.
Executive Secretary
NEW MOTOR VEHICLE BOARD
1401 - 21st Street, Suite 407
Sacramento, California 95814

Re: DODGE COUNTY, INC.
DMV Case No. D-1995

Dear Mr. Jennings:

As the result of an agreement reached with the Department of Motor Vehicles, the Notice of Appeal heretofore filed with the New Motor Vehicle Board is hereby withdrawn. It is understood that by withdrawing this Notice of Appeal, the respondent Dodge County, Inc. waives any further rights to appeal before the New Motor Vehicle Board.

Very truly yours,



HAROLD C. WRIGHT

HCW/ps

cc: Nancy L. Rasmussen, Esq.
DMV Staff Counsel
Office of Administrative Hearings
Dodge Country, Inc.
Director, Department of Motor Vehicles

1 NEW MOTOR VEHICLE BOARD
1401 - 21st Street
2 Suite 407
Sacramento, California 95814
3 Telephone: (916) 445-1888
4
5
6
7

8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Appeal of)
12 TRANSPORTATION VEHICLES, INC.,) Appeal No. A-89-80
13 Appellant,)
14 vs.)
15 DEPARTMENT OF MOTOR VEHICLES,) ORDER
16 Respondent.)
17

18 At its regularly scheduled meeting on January 28, 1981,
19 the New Motor Vehicle Board considered the Department of Motor
20 Vehicles' Motion to Dismiss on the above entitled matter. The
21 appeal was ordered dismissed on the following grounds:

22 a) The appeal was not timely filed within the period
23 of limitations set forth in Vehicle Code Section 3052;

24 b) The appellant is not a new motor vehicle dealer
25 subject to the Board's jurisdiction; and

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FILED
DEPT. OF MOTOR VEHICLES
DEC 22 1980
BY *L. Hackman*

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of)
)
STEVENS PONTIAC-GMC., INC.,)
A Corporation,)
)
)
)
Respondent.)

CASE NO. D-1991
MODIFICATION OF ORDER

The Stipulation and Waiver entered into between the Department of Motor Vehicles and the Respondent herein, a copy of which is herewith served upon you and which has heretofore been filed as a public record, is hereby adopted by the Director of Motor Vehicles as the Modification of Order in the above matter.

This MODIFICATION OF ORDER shall become effective
DEC 22 1980

DATED 12-22-80

Doris V. Alexis
DORIS V. ALEXIS
Director

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FILED
DEPT. OF MOTOR VEHICLES
DEC 22 1980
BY *L. Hockman*

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of)
STEVENS PONTIAC-GMC, INC.,)
A Corporation,)
Respondent.)

CASE NO. D-1991
STIPULATION AND
WAIVER

Parties to the above case do hereby stipulate that:

(a) Disciplinary action on the above-entitled Accusation may be taken as hereinafter set forth.

(b) Respondent waives its right to reconsideration, any and all appeals, and any and all rights which may be afforded pursuant to the Vehicle Code, the Administrative Procedure Act, and any other provision of law.

(c) Respondent withdraws its appeal on file with the New Motor Vehicle Board in this matter.

(d) The amended Order set forth in the Order and Decision After Reconsideration filed August 20, 1980 is modified, and the following Order shall be entered by the Director of Motor Vehicles respecting Respondent's dealer's license and special plates (D-224) issued by the Department.

ORDER

The license is suspended for thirty (30) days, provided the order of suspension is stayed and Respondent is placed on probation for one (1) year on the following terms:

1. The license is suspended for two (2) days on December 26, 1980 and December 27, 1980.

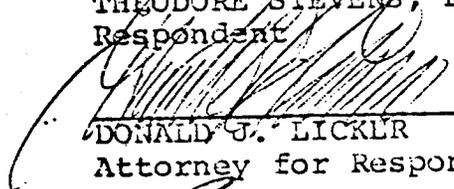
2. No further cause for discipline shall occur during the probation period.

In the event the Department of Motor Vehicles should determine, after giving Respondent notice and opportunity to be heard, that a violation of probation has occurred, the Department may terminate the stay and impose the thirty (30) day suspension or otherwise modify the order. In the event the Respondent shall faithfully keep the terms and conditions imposed for the period of one (1) year, the stay shall become permanent and the Respondent shall be restored to all license privileges.

DATED 12-15-80


THEODORE STEVENS, President
Respondent

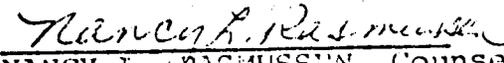
DATED 12/15/80


DONALD J. LICKLER
Attorney for Respondent

DATED 12/12/80


ROGER E. HAGEN, Chief
Division of Compliance

DATED 12/15/80


NANCY L. RASMUSSEN, Counsel for
Department of Motor Vehicles

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Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

STEVENS PONTIAC-GMC., INC.,	)	APPEAL NO. A-90-80
A Corporation,)	
)	
Appellant,)	
)	
vs.)	
)	
DEPARTMENT OF MOTOR VEHICLES,	)	ORDER OF REMAND
)	
Respondent.)	

The above entitled matter is remanded to the Department of Motor Vehicles pursuant to the attached Stipulation and Waiver dated December 15, 1980.

Dated: 12/17/80

Kathleen O. Turner
KATHLEEN O. TURNER
President
New Motor Vehicle Board

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STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of)	
STEVENS PONTIAC-GMC, INC.,)	CASE NO. D-1991
A Corporation,)	STIPULATION AND
)	WAIVER
)	
Respondent.)	
)	

Parties to the above case do hereby stipulate that:

(a) Disciplinary action on the above-entitled Accusation may be taken as hereinafter set forth.

(b) Respondent waives its right to reconsideration, any and all appeals, and any and all rights which may be afforded pursuant to the Vehicle Code, the Administrative Procedure Act, and any other provision of law.

(c) Respondent withdraws its appeal on file with the New Motor Vehicle Board in this matter.

(d) The amended Order set forth in the Order and Decision After Reconsideration filed August 20, 1980 is modified, and the following Order shall be entered by the Director of Motor Vehicles respecting Respondent's dealer's license and special plates (D-224) issued by the Department.

ORDER

The license is suspended for thirty (30) days, provided the order of suspension is stayed and Respondent is placed on probation for one (1) year on the following terms:

1. The license is suspended for two (2) days on December 26, 1980 and December 27, 1980.

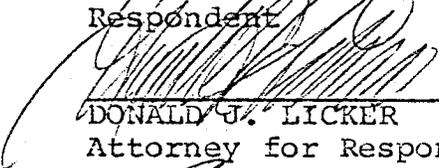
2. No further cause for discipline shall occur during the probation period.

In the event the Department of Motor Vehicles should determine, after giving Respondent notice and opportunity to be heard, that a violation of probation has occurred, the Department may terminate the stay and impose the thirty (30) day suspension or otherwise modify the order. In the event the Respondent shall faithfully keep the terms and conditions imposed for the period of one (1) year, the stay shall become permanent and the Respondent shall be restored to all license privileges.

DATED 12-15-80


THEODORE STEVENS, President
Respondent

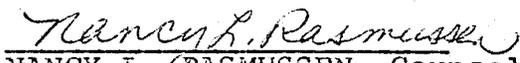
DATED 12/15/80


DONALD J. LICKER
Attorney for Respondent

DATED 12/12/80


ROGER E. HAGEN, Chief
Division of Compliance

DATED 12/15/80


NANCY L. RASMUSSEN, Counsel for
Department of Motor Vehicles

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

STEVENS PONTIAC-GMC., INC.,)	APPEAL NO. A-90-80
A Corporation,)	
)	
Appellant,)	
)	
vs.)	
)	
DEPARTMENT OF MOTOR VEHICLES,	)	ORDER OF REMAND
)	
Respondent.)	

The above entitled matter is remanded to the Department of Motor Vehicles pursuant to the attached Stipulation and Waiver dated December 15, 1980.

Dated: _____

KATHLEEN O. TURNER
President
New Motor Vehicle Board

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
KINZIE LAND CO., INC., a) Appeal No. A-91-80
Corporation, and BERKSHIRE)
HOMES, INC., et al.,)
Appellants,)
vs.)
DEPARTMENT OF MOTOR VEHICLES,) ORDER OF DISMISSAL
Respondent.)

At its regularly scheduled meeting of January 28, 1981,
the New Motor Vehicle Board considered the Department of Motor
Vehicle's Motion to Dismiss on the above entitled matter. The
Motion to Dismiss is granted. The Appeal on the above entitled
matter is hereby Dismissed.

IT IS SO ORDERED this 28th day of January, 1981.



SAM W. JENNINGS
Executive Secretary
New Motor Vehicle Board

1 NEW MOTOR VEHICLE BOARD
1401 - 21st Street, Suite 407
2 Sacramento, California 95814
Telephone: (916) 445-1888
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7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD
9

10 TOWN & COUNTRY MOTORS, INC.,) APPEAL NO. A-92-80
a Corporation, dba)
11 TOWN & COUNTRY FORD,)
12 Appellant,)
13 vs.)
14 DEPARTMENT OF MOTOR VEHICLES,) ORDER OF REMAND
Respondent.)
16

17 On December 17, 1980, the New Motor Vehicle Board
18 (Board) considered the Petition for Remand submitted by the
19 Department of Motor Vehicles on December 16, 1980. Following
20 this consideration, the Board issued the following order:

21 The Appeal is remanded to the Department of Motor
22 Vehicles on the following conditions:

23 (a) Appellant's license and special plates are
24 suspended for ten (10) days;

25 (b) Appellant shall reimburse the purchasers of the
26 vehicles identified as items 1 through 8 in schedule A attached
27 to the Accusation, in an amount deemed appropriate in further

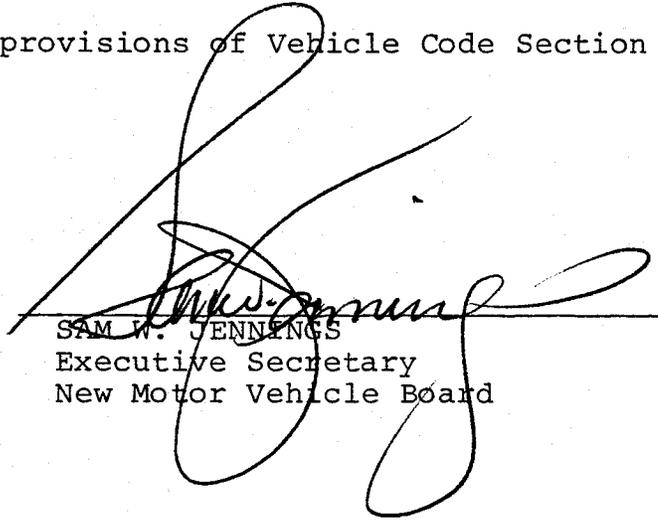
1 negotiations between appellant and the Department plus interest
2 at a reasonable rate thereon;

3 (c) The sanctions in paragraphs (a) and (b) above will
4 be the total penalty which appellant is subject to for the
5 alleged violations; and

6 (d) This Order of Remand is conditioned upon the
7 parties entering into a final stipulation incorporating these
8 conditions within five (5) working days of the date of this order.

9 In the event the above conditions are not fulfilled and
10 said stipulation is not executed by the parties within the time
11 prescribed, this Order of Remand is void and the Board shall hear
12 this Appeal pursuant to the provisions of Vehicle Code Section
13 3052, et seq.

14 Dated: December 19, 1980.

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17 SAM W. JENNINGS
18 Executive Secretary
19 New Motor Vehicle Board
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STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of)
TOWN & COUNTRY MOTORS, INC.,) CASE NO. D-2142
A Corporation, dba) STIPULATION AND WAIVER
TOWN & COUNTRY FORD,)
Respondent.)

Parties to the above case do hereby stipulate that:

(a) Disciplinary action on the above-entitled Accusation may be taken as hereinafter set forth.

(b) Respondent waives its right to reconsideration, any and all appeals, and any and all rights which may be afforded pursuant to the Vehicle Code, the Administrative Procedure Act, and any other provision of law.

(c) Respondent will withdraw its appeal on file with the New Motor Vehicle Board in this matter.

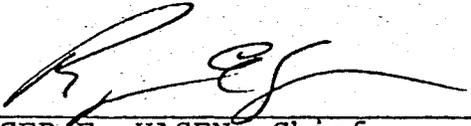
(d) The following Order shall be entered by the Director of Motor Vehicles respecting Respondent's dealer's license and special plates (D-2091) issued by the Department.

ORDER

(a) Respondent's license and special plates (D-2190) shall be suspended for ten (10) days.

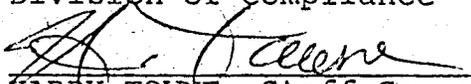
1 (b) Respondent shall reimburse the purchasers of the
2 vehicles listed as items 1 through 8, in Schedule A,
3 attached to the Accusation, in an amount deemed
4 appropriate by the Department plus interest at a
5 reasonable rate thereon.

6
7 DATED: 12-18-80



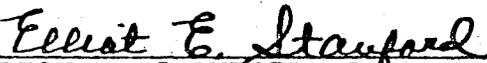
ROGER E. HAGEN, Chief
Division of Compliance

8
9 DATED: 12-18-80



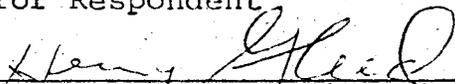
HARRY TOWNE, Staff Counsel for
Department of Motor Vehicles

10
11 DATED: 12-23-80



ELLIOT E. STANFORD, Attorney
for Respondent

12
13 DATED: 12-23-80



HENRY GLEED, President of
Respondent

1507 - 21st Street
Suite 330
Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
TOYOTA OF VISALIA, INC.,) Appeal No. A-93-80
Appellant,)
vs.) ORDER
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)
Respondent.)
_____)

This matter came before the Board upon remand from the Superior Court of California, County of Tulare, pursuant to direction from the Fifth District Court of Appeal, for reconsideration and redetermination of the penalty to be imposed. The Board hereby adopts and incorporates by reference each of its findings of fact as set forth in the attached order, filed December 23, 1980. After consideration of all of the evidence in the record and the oral and written arguments of counsel, it is hereby ordered that Appellant's license be put on probation for a period of three (3) years from the effective date of this order. In addition, Appellant's license will be suspended for a period of thirty (30) consecutive days commencing on February 1, 1985, unless, prior to January 1, 1985, Appellant

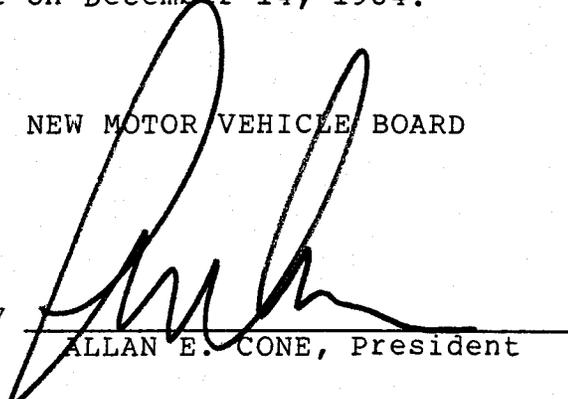
or an authorized representative thereof notifies the Board in writing of its election to segment the suspension into two (2) separate fifteen (15) consecutive day periods, one of which to be taken within the first calendar quarter of 1985 and the other within the second calendar quarter of 1985. Should Appellant elect to handle the suspension in segments as herein described, the notice served upon the Board prior to January 1, 1985 must indicate the dates chosen by Appellant for the commencement of each period of suspension.

This order shall become effective on December 14, 1984.

Dated: December 7, 1984

NEW MOTOR VEHICLE BOARD

By


ALLAN E. CONE, President

1401 - 21st Street
Suite 407
Sacramento, California 95814
Telephone: (916)445-1888

July 2, 1981

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)	
)	
TOYOTA OF VISALIA, INC.,	)	Appeal No. A-93-80
)	
Appellant,)	
)	
vs.)	
)	
DEPARTMENT OF MOTOR VEHICLES	)	FILED: December 23, 1980
OF THE STATE OF CALIFORNIA,)	
)	
Respondent.)	
)	

Time and Place of Hearing:

June 25, 1981, 9:30 a.m.
Holiday Inn, LAX
Papagayo Room
Los Angeles, California

For Appellant:

Lloyd L. Hicks, Esq.
Law Office of Houk, Hicks
& Spain
115 South Church Street
Post Office Box 407
Visalia, California 93277

For Respondent:

Leo V. Bingham, Esq.
Staff Counsel, Legal Office
Department of Motor Vehicles
Post Office Box 11828
Sacramento, California 95813

FINAL ORDER

1. On January 25, 1980, the Department of Motor Vehicles, (Department), filed a formal accusation against Toyota of Visalia for alleged violations of the California Vehicle Code and Title 13 of the California Administrative Code. A hearing was held, and on November 13, 1980, an Administrative Law Judge submitted a proposed decision which would revoke the license of Toyota of Visalia. This decision was adopted by the Department on November 26, 1980.

2. On November 26, 1980, Toyota of Visalia filed with the Department a petition for reconsideration. On December 24, 1980, the Director of the Department issued an order denying Appellant's petition.

3. The present appeal before the Board was filed on December 23, 1980.

Listed below are each of the findings of the Department which resulted in license discipline of the Appellant together with this Board's action.

Department's Finding IV

4. In Finding IV of the Department's decision, Appellant was found to have failed to mail or deliver the reports of sale of certain vehicles, together with other documents required to transfer the registration of the said vehicles within 40 days from the date of sale. The Department imposed a license suspension of 15 days for this conduct.

5. The Board determines that the penalty as provided in the Department's decision was not supported by the findings. Based on this determination, the Board reduces the penalty from a 15-day license suspension to a probation period of two years.

Department's Finding V

6. In Finding V of the Department's decision, Appellant was found to have included as an added cost to the selling price of certain vehicles, licensing or transfer fees in excess of the fees due and paid to the State. The Department imposed a license suspension of 15 days for this conduct.

7. The Board determines that the finding was supported by the evidence and that the penalty as provided in the decision of the Department is commensurate with the findings. Based on this determination, the Board affirms the penalty of a 15-day license suspension imposed by the Department.

Department's Finding VI

8. In Finding VI of the Department's decision, the Appellant was found to have advertised vehicles for sale at a stated total price and then sold the advertised vehicles, while the advertised price was still effective, at a higher total price than advertised, causing the purchasers to suffer loss. The Department imposed a license revocation for this conduct.

9. The Board examined the language of the statutes and regulations in effect at the time of the alleged violation. The statute in effect at the time made it unlawful for a

dealer "to refuse to sell a vehicle to any person at the advertised total price . . .". The regulation in effect at the time provided, "Advertised vehicles must be sold at or below the advertised price irrespective of whether or not the advertised price has been communicated to the purchaser." The Board also noted that the above statute has been changed to read that it is unlawful for a dealer "to fail to sell a vehicle to any person at the advertised total price. . .".

10. The Board determines that the Department proceeded in a manner contrary to the law with regard to this finding. The Board therefore reverses the finding and penalty of the Department and finds no violation.

Department's Finding VII

11. In Finding VII of the Department's decision, Appellant was found to have advertised it would give free merchandise with the purchase of any new or used vehicle, and then failed to give the advertised merchandise free of charge. The Department imposed a license revocation for this conduct.

12. The Board determines that the finding was supported by the evidence and that the penalty as provided in the decision of the Department is commensurate with the findings. Based on this determination, the Board affirms the penalty of license revocation imposed by the Department.

Department's Finding IX

13. In Finding IX of the Department's decision, Appellant was found to have advertised that it would lease two new vehicles for a price of \$99.00 down and \$99.00 per month, with no intention to sell or lease these vehicles at the advertised terms. The Department imposed a license revocation for this conduct.

14. The Board determines that the finding was supported by the evidence and that the penalty as provided in the decision of the Department is commensurate with the findings. Based on this determination, the Board affirms the penalty of license revocation imposed by the Department.

Department's Finding X

15. In Finding X of the Department's decision, Appellant was found to have employed or delegated the duties of a vehicle salesperson to five individuals who had not been licensed pursuant to Vehicle Code Section 11800, et seq. The Department imposed a license suspension of 60 days for this conduct.

16. The Board determines that the penalty as provided in the Department's decision was not supported by the findings. Based on this determination, the Board modifies the penalty from a 60-day license suspension to a 30-day license suspension.

Department's Finding XI

17. In Finding XI of the Department's decision, Appellant was found to have failed to give written notice

to the Department before the end of the fifth calendar day after the transfer of certain vehicles. The Department imposed a license suspension of 30 days for this conduct.

18. The Board determines that the penalty as provided in the Department's decision was not supported by the findings. Based on this determination, the Board modifies the penalty from a 30-day license suspension to a 5-day license suspension.

Department's Finding XII

19. In Finding XII of the Department's decision, Appellant was found to have advertised vehicles for sale at a stated total price and then sold those vehicles while the advertised price was still effective, at a greater total price than advertised, exclusive of sales tax, vehicle registration fees and finance charges, causing each purchaser to suffer loss. The Department imposed a license suspension of 60 days for this conduct.

20. Inasmuch as this finding is the same as Finding VI of the Department's decision, the Board takes the same action, reverses the decision of the Department on this finding and finds no violation.

Department's Finding XIII

21. In Finding XIII of the Department's decision, Appellant was found to have advertised vehicles for sale more than 48 hours after the vehicle had been sold. The Department imposed a license revocation for this conduct.

22. The Board determines that the finding was supported by the evidence and that the penalty as provided in the decision of the Department is commensurate with the findings. Based on this determination, the Board affirms the penalty of license revocation imposed by the Department.

Department's Finding XIV

23. In Finding XIV of the Department's decision, Appellant was found to have placed "PAC" stickers on vehicles which gave information about accessories, delivery, and freight charges, that differed from the federal window sticker information of these vehicles. The Department imposed a license suspension of 60 days for this conduct.

24. The Board determines that the finding was supported by the evidence, however, the penalty as provided in the decision of the Department is not commensurate with the finding. Based on this determination, the Board modifies the penalty from a license suspension of 60 days to a license revocation.

///

25. The Board has found grounds for revocation of the license of Appellant. A review of all of the evidence submitted by the Department supports the conclusion that Appellant knowingly and fraudulently misled the consuming public. The Board believes such conduct should be critically reviewed if Appellant should seek a license from the Department in the future.

The decision of the Director is affirmed as modified.

This order shall become effective August 1, 1981.

Dated: *July 14, 1981*

NEW MOTOR VEHICLE BOARD

BY *Kathleen O. Turner*
KATHLEEN O. TURNER
President

1401 - 21st Street
Suite 407
Sacramento, California 95814
Telephone: (916)445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
PIONEER DODGE, INC.)
Appellant,)
vs.)
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)
Respondent.)

Appeal No. A-93⁴-80

FILED: December 23, 1980

Time and Place of Hearing:

June 25, 1981, 9:30 a.m.
Holiday Inn, LAX
Papagayo Room
Los Angeles, California

For Appellant:

Lloyd L. Hicks, Esq.
Law Office of Houk, Hicks
& Spain
115 South Church Street
Post Office Box 407
Visalia, California 93277

For Respondent:

Leo V. Bingham, Esq.
Staff Counsel, Legal Office
Department of Motor Vehicles
Post Office Box 11828
Sacramento, California 95813

Final Order

1. On January 25, 1980, the Department of Motor Vehicles, (Department), filed a formal accusation against Pioneer Dodge, Inc. for alleged violations of the California Vehicle Code and Title 13 of the California Administrative Code. A hearing was held, and on November 13, 1980, an Administrative Law Judge submitted a proposed decision which would revoke the license of Pioneer Dodge, Inc.. This decision was adopted by the Department on November 26, 1980.

2. On November 26, 1980, Pioneer Dodge filed with the Department a petition for reconsideration. On December 24, 1980, the Director of the Department issued an order denying Appellant's petition.

3. The present appeal before the Board was filed on December 23, 1980.

4. Listed below are each of the findings of the Department which resulted in license discipline of the Appellant together with this Board's action.

Department's Finding IV

5. In Finding IV of the Department's decision, Appellant was found to have failed to give written notice to the Department before the end of the fifth calendar day after the transfer of certain vehicles. The Department imposed a license suspension of 10 days for this conduct.

6. The Board determines that the penalty as provided in the Department's decision was not supported by the findings. Based on this determination, the Board reduces the penalty from a 10-day license suspension to a 5-day license suspension.

Department's Finding V

7. In Finding V of the Department's decision, Appellant was found to have failed to mail or deliver the reports of sale of certain vehicles, together with other documents required to transfer the registration of the said vehicles within 40 days from the date of sale. The Department imposed a license suspension of 10 days for this conduct.

8. The Board determines that the penalty as provided in the Department's decision was not supported by the findings. Based on this determination, the Board reduces the penalty from a 10-day license suspension to a probation period of two years.

Department's Finding VI

9. In Finding VI of the Department's decision, the Appellant was found to have included as an added cost to the selling price of certain vehicles, licensing or transfer fees in excess of the fees due and paid to the state. The Department imposed a license suspension of 10 days for this conduct.

10. The Board determines that the penalty as provided in the Department's decision was not commensurate with the findings. Based on this determination, the Board increases the penalty from a 10-day license suspension to a 15-day license suspension.

Department's Finding VII

11. In Finding VII of the Department's decision, the Appellant was found to have advertised for sale at a stated total price and then sold the advertised vehicles, while the advertised price was still effective, at a higher total price than advertised, causing the purchaser to suffer loss. The Department imposed a 50-day suspension for this conduct.

12. The Board examined the language of the statutes and regulations in effect at the time of the alleged violation. The statute in effect at the time made it unlawful for a dealer "to refuse to sell a vehicle to any person at the advertised total price . . .". The regulation in effect at the time provided, "Advertised vehicles must be sold at or below the advertised price irrespective of whether or not the advertised price has been communicated to the purchaser". The Board also noted that the above statute has been changed to read that it is unlawful for a dealer "to fail to sell a vehicle to any person at the advertised total price. . .".

13. The Board determines that the Department proceeded in a manner contrary to the law with regard to this finding. The Board therefore reverses the finding and penalty of the Department and finds no violation.

Department's Finding VIII

14. In Finding VIII of the Department's decision, Appellant was found to have advertised it would give free merchandise with the purchase of any new or used vehicle, and then failed to give the advertised merchandise free of charge. The Department imposed a license revocation for this conduct.

15. The Board determines that the finding was supported by the evidence and that the penalty as provided in the decision of the Department is commensurate with the findings. Based on this determination, the Board affirms the penalty of license revocation imposed by the Department.

Department's Finding IX

16. In Finding IX of the Department's decision, Appellant was found to have advertised that it would lease two new vehicles for a price of \$99.00 down and \$99.00 per month, with no intention to sell or lease these vehicles at the advertised terms. The Department imposed a license revocation for this conduct.

17. The Board determines that the finding was supported by the evidence and that the penalty as provided in the decision of the Department is commensurate with the findings. Based on this determination, the Board affirms the penalty of license revocation by the Department.

Department's Finding X

18. In Finding X of the Department's decision, Appellant was found to have advertised vehicles for sale at a stated total price and then sold those vehicles while the advertised price was still effective, at a greater total price than advertised, exclusive of sales tax, vehicle registration fees and finance charges, causing each purchaser to suffer loss. The Department imposed a license suspension of 50 days for this conduct.

19. Inasmuch as this finding is the same as Finding VI of the Department's decision, the Board takes the same action, reverses the decision of the Department on this finding and finds no violation.

Department's Finding XI

20. In Finding XI of the Department's decision, Appellant was found to have advertised vehicles for sale more than 48 hours after the vehicle had been sold. The Department imposed a license suspension of 60 days for this conduct.

21. The Board determines that the penalty as provided in the Department's decision is not commensurate with the finding. Based on this determination, the Board modifies the penalty from a license suspension of 60 days to a license revocation.

22. The Board has found grounds for revocation of the license of Appellant. A review of all of the evidence submitted by the Department supports the conclusion that Appellant knowingly and fraudently mislead the consuming public. The Board believes such conduct should be critically reviewed if Appellant should seek a license from the Department in the future.

The decision of the Director is affirmed as modified.

This order shall become effective August 1, 1981.

Dated: *July 14, 1981*

NEW MOTOR VEHICLE BOARD

By *Kathleen O. Turner*
KATHLEEN O. TURNER
President

1 NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
SIGNER-CRAM BUICK, INC.,) Appeal No. A-95-82
Appellant,)
vs.) ORDER OF DISMISSAL
DEPARTMENT OF MOTOR VEHICLES,)
Respondent.)

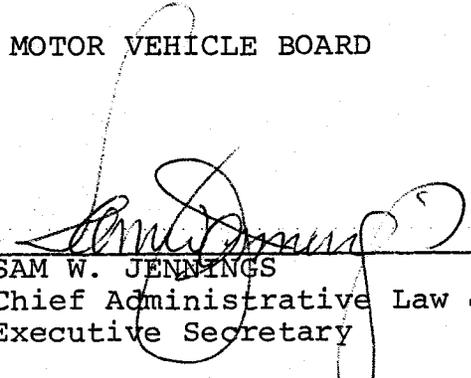
TO: Houston N. Tuel, Jr., Esq., Attorney for Appellant
Coder & Tuel
8801 Folsom Boulevard, Suite 172
Sacramento, California 95826
Alan Mateer, Esq.
Chief, Legal Section, Department of Motor Vehicles
Post Office Box 11828, 2415 First Avenue
Sacramento, California 95818

PURSUANT TO APPELLANT'S request to withdraw its appeal
as a result of the Director's Order setting aside the Decision
//
//
//

1 of the Department of Motor Vehicles, the appeal in the above-
2 entitled matter is hereby dismissed.

3 There will be no further proceedings before the New Motor
4 Vehicle Board.

5 DATED: January 4, 1983 NEW MOTOR VEHICLE BOARD

6
7
8 By 
9 SAM W. JENNINGS
10 Chief Administrative Law Judge/
11 Executive Secretary

12 cc: Jack Miller, Acting Director, DMV
13 Roger Hagen, Chief, Div. Reg. Svcs./
14 Compl. Enf., DMV

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NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-1888

June 24, 1983

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of:)
FEN, INC. dba VALLEY MAZDA,)
Appellant,)
vs.)
DEPARTMENT OF MOTOR VEHICLES OF)
THE STATE OF CALIFORNIA,)
Respondent.)

Appeal No. A-96-83

FILED: January 17, 1983

Time and Place of Hearing:

June 24, 1983, 10:30 a.m.
1507 - 21st Street
Suite 330
Sacramento, California 95814

For Appellant:

Harold C. Wright, Esq.
Wright & Britton
3190 Clearview Way
Suite 210
San Mateo, California 94402

For Respondent:

Nancy Rasmussen, Esq.
Staff Counsel, Legal Office
Department of Motor Vehicles
Post Office Box 11828
Sacramento, California 95818

FINAL ORDER

1. On May 24, 1982, the Department of Motor Vehicles, (Department), filed a formal accusation against Fen Inc., doing business as Valley Mazda (Appellant), for alleged violations of the California Vehicle Code and Title 13 of the California Administrative Code. A hearing was held, and on December 13, 1982, an Administrative Law Judge submitted a proposed decision which would suspend for ten days the license and special plates of Appellant. The proposed decision provided for a one-year stay of the suspension on the conditions that Appellant incur no further cause for disciplinary action for one year and that Appellant not utilize the advertisement which was the subject matter of the hearing. This decision was adopted by the Department on December 13, 1982.

2. The Appeal was filed with the Board on January 17, 1983.

Listed below are each of the findings of the Department which resulted in disciplinary action against the Appellant and this Board's determinations in regard thereto.

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DEPARTMENT'S FINDING IV

3. The Department's Finding IV was as follows:

A. *The accusation in this matter involved several separate instances wherein the Department alleged respondent had violated Section 11713(a) of the California Vehicle Code; each instance constituting a cause to impose discipline under Section 11705(a)(10) of said Code.*

In each instance the Department charged respondent's newspaper advertisements on specific dates in the San Jose Mercury News were "false or misleading".

Essentially each ad first mentioned a definite [sic] price for the vehicle being offered by respondent for sale to the public. Thus, the advertisements ("subject ads") read: "\$_____ cash, trade or pay credit mgr. \$3 deposit and finish balance EZ way w/ok job or credit". Specifically, the Department alleged ". . . advertisement was false and misleading in the Respondent had no intention of selling the advertised vehicle on credit with a deposit of \$3.00".

B. *Respondent admitted said ad was designated to attract the public to its showroom - and, as it is the purpose of most advertisements - to attempt to sell its*

product. Further that the \$3.00 deposit was intended to pay for its costs of a credit report and was a psychological device to get something being exchanged between the customer and the dealership in an effort to make a sale more likely. Respondent denied, however, that it had no intention of selling such advertised vehicles on credit with a deposit of \$3.00.

- C. The credit worthiness of potential purchasers was ultimately determined by several independent financial lending institutions. It was to these institutions to whom the respondent dealership forwarded both the employment and credit records of its potential purchasers. Respondent carried no "paper" on such sales; that is, it did not finance any of its vehicle sales.

After review of the employment and credit reports of a potential buyer, either one or several of these lending institutions would, unbeknownst to the customer, either deny financing in particular cases - or would set the terms of such financing; for example, by requiring a minimum amount of cash to be deposited as a down payment on the vehicle in question - aside from, and regardless of, the \$3.00 deposit mentioned in respondent's advertisements.

At all times herein mentioned respondent was well aware of its own credit evaluation processes (as above found). Thus it would not know, at the time of placing each of the advertisements here in question, whether a deposit of \$3.00 as a down payment would, in fact, be qualifying in order to purchase any given vehicle it advertised.

If, on the other hand it so happened that the lender would permit a down payment of \$3.00 only (essentially a 100% financing of the purchase price), respondent was and would be willing to consummate the transaction on such terms.

It was in this sense that the advertisement was misleading. While the language of the advertisement was stipulated not to be misleading, nevertheless, the respondent's practice in supplementing the ad was misleading; thereby making the advertisement itself misleading. It, the advertisement, failed to inform the public that in actuality even if a prospective customer had an "ok job or credit" the deposit required would not necessarily and always be \$3.00. The deposit required would be, as respondent well knew, any sum of money - all dependent on the lender's terms.

D. It was not established that any of the particular potential purchasers of the vehicles designated in the accusation actually had "ok credit". In addition to the qualifying requirements of a lender being highly discretionary with the lending institution, there were not lending standards or guidelines introduced by which to possibly show that credit in any individual instance was "O.K."

For this conduct the Department, in conjunction with the Department's Finding V, imposed a five-day suspension of Appellant's license and special plates.

4. The Board determines that the findings are not supported by the weight of the evidence in light of the whole record reviewed in its entirety, and that the decision is not supported by the findings. The Board therefore reverses the decision of the Department in regard to Finding IV and finds no violation.

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DEPARTMENT'S FINDING V

5. The Department's Finding V was as follows:

V.

As to the 1976 Ford, license #274 PGX, advertised on or about June 27, 1981, for \$1,288.00 the subject ad was misleading in that respondent intended only to sell this vehicle for cash alone.

For this conduct the Department, in conjunction with the Department's Finding IV, imposed a five-day suspension of Appellant's license and special plates.

6. The Board determines that the findings are not supported by the weight of the evidence in light of the whole record reviewed in its entirety, and that the decision is not supported by the findings. The Board therefore reverses the decision of the Department in regard to Finding V and finds no violation.

DEPARTMENT'S FINDING VIII

7. The Department's Finding VIII was as follows:

As to the 1979 GMC Pick-Up, license IL 89958 advertised for \$4,488.00 on August 1, 1981, the subject ad was

misleading. Not only was the prospective purchaser under an "impression" that the respondent dealership would only sell this vehicle for cash, but said person was informed by respondent that the vehicle could not be financed.

For this conduct the Department, in conjunction with the Department's Finding IV, imposed a five-day suspension of Appellant's license and special plates.

8. The Board determines that the findings are not supported by the weight of the evidence in light of the whole record reviewed in its entirety and that the decision is not supported by the findings. The Board therefore reverses the decision of the Department in regard to Finding VIII and finds no violation.

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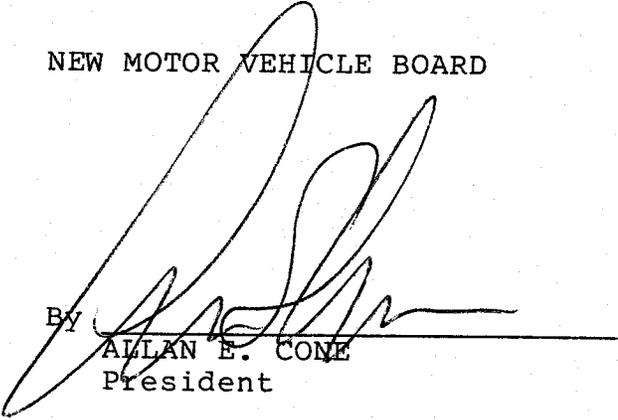
Specifically, the Board finds:

1. The decision of the Department is reversed.
2. The penalty imposed by the Department is reversed.

The decision of the Director is reversed.

DATED: June 24, 1983

NEW MOTOR VEHICLE BOARD

By 

ALLAN E. CONE
President

1 NEW MOTOR VEHICLE BOARD
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2 Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA

9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Appeal of)
12 ROBERT JAMES OLIVER dba) Appeal No. A-97-83
OLIVERCYCLE,)
13)
Appellant,)
14)
vs.) ORDER OF DISMISSAL
15)
DEPARTMENT OF MOTOR VEHICLES,)
16)
Respondent.)
17)

18 TO: Mr. Robert James Oliver, Appellant, In Pro Per
Olivercycle
19 270 Cannery Row
Monterey, California 93940

20 Alan Mateer, Esq., Chief Counsel; Nancy L. Rasmussen, Esq.,
21 Staff Counsel for Respondent
Department of Motor Vehicles
22 Post Office Box 11828
Sacramento, California 95853
23

24 YOU ARE BEING NOTIFIED that Respondent Department of Motor
25 Vehicles' Motion to Dismiss Appeal is hereby granted.

26 / /

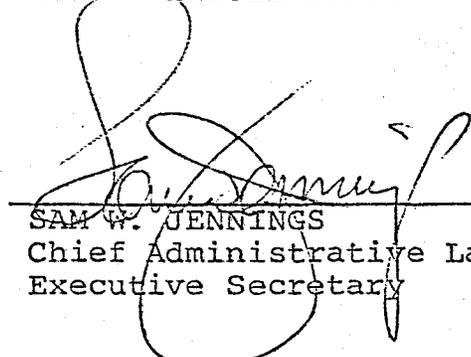
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1 There will be no further proceedings in this cause before
2 the New Motor Vehicle Board.

3 DATED: June 11, 1984

NEW MOTOR VEHICLE BOARD

6
7 By



SAM W. JENNINGS

Chief Administrative Law Judge/
Executive Secretary

9 cc: George E. Meese, Director, DMV
10 Roger Hagen, Chief, Division Registration
11 & Investigative Services, DMV
Legal Office, DMV

1 NEW MOTOR VEHICLE BOARD
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

11 PITTSBURG FORD, INC.) Appeal Number A-98-86
12 Appellant,)
13 vs.) CONCURRING AND DISSENTING
14 DEPARTMENT OF MOTOR VEHICLES) OPINION
15 OF THE STATE OF CALIFORNIA,)
16 Respondent.)

17
18 INTRODUCTION

19 1. On April 10, 1986, the Department of Motor Vehicles,
20 ("Department"), filed a formal accusation against Pittsburg Ford
21 Inc. ("Appellant") for alleged violations of the California
22 Vehicle Code and Title 13 of the California Administrative
23 Code. A hearing on the matter was held before Ruth S. Astle,
24 Administrative Law Judge, Office of Administrative Hearings, in
25 San Francisco, California on May 1, 2, 5, 6, 1986 and June 19,
26 1986. On July 3, 1986, the Administrative Law Judge submitted a
27 proposed decision to the Director of the Department pursuant to
28 which the Appellant's occupational license and special plates

1 were revoked. The revocation was however stayed, subject to
2 specified terms and conditions of probation. One of the terms
3 and conditions of probation was that a representative of Ford
4 Motor company actively participate in the management of the
5 dealership on a day-to-day basis. The proposed decision also
6 imposed an actual suspension of Appellant's license for a period
7 of seven (7) days. The Administrative Law Judge's proposed
8 decision was adopted by the Director of the Department on July
9 11, 1986.

10 2. On August 15, 1986, Appellant filed an appeal with the
11 New Motor Vehicle Board ("Board") pursuant to section 3052 of
12 the California Vehicle Code.

13 3. Briefs were submitted to the Board by the Appellant and
14 the Department. The Appellant requested and was granted
15 permission to present additional evidence before the Board. A
16 hearing was held before the Board on January 13, 1987, at which
17 time the Board received further evidence and heard oral
18 arguments.

19 4. On February 23, 1987, the Board issued a Final Order
20 which contained additional and specific findings of fact which
21 included a finding that LaRoy Doss, the president of Pittsburg
22 Ford, had actual knowledge of the fraudulent practice of
23 altering invoices which had been going on at the dealership.
24 The Board further found that Doss not only had knowledge that
25 the altered invoices were being used to consummate sales but
26 also had access to them. The Board found specifically that, on
27 at least one occasion, Doss had possession of an altered invoice
28

1 and in another occasion he requested that he be brought an
2 altered invoice while dealing with a customer.

3 5. The Board's final order also contained a finding that
4 it was common knowledge among the employees of Pittsburg Ford
5 that invoices were being systematically altered and fraudulently
6 used to consummate sales. Furthermore, it was found that
7 Pittsburg regularly advertised "Invoice Sales" and that the
8 total number of deceived buyers was impossible to determine.
9 Moreover, the Board found that the Department's investigation
10 represented approximately two months of the two year period
11 during which Appellant was engaged in altering and utilizing
12 altered invoices. The Final Order of the Board also contained a
13 finding that Appellant had used the altered invoices in
14 connection with the sale of 15 vehicles to U. S. Fleet Leasing,
15 Inc.

16 6. The Board modified the penalty imposed by eliminating
17 the terms of probation and affirmed the Department to a
18 revocation of Appellant's occupational license and special
19 plates. The Board, in consideration of the innocent employees
20 and the community, gave the owners of Pittsburg Ford one year to
21 either sell the dealership or otherwise dispose of their
22 interests therein.

23 7. After issuance of the Board's Final Order, Appellant
24 filed a Petition for Writ of Administrative Mandamus in the
25 Sacramento County Superior Court. On October 27, 1987, the
26 court issued its decision in this matter which held that the
27 Board's findings and the assessment of the penalty of revocation
28 were supported by the record. Specifically, the Court held

1 "Petitioner has pointed out the mitigating factors, but the
2 Board could find on this record that Doss was such a poor
3 manager as to necessitate an outright revocation of the
4 petitioner's license." (page 25, line 19 through 22) and "the
5 difference (in the Department's and the Board's findings of
6 whether or not Doss had actual knowledge) is not significant,
7 because both the ALJ and the Board had sufficient evidence to
8 revoke." (page 28, line 13 through 14). The court did however
9 hold that the Board committed error in including in its final
10 order a finding with respect to the 15 U. S. Fleet Leasing, Inc.
11 sales which were not originally charged by the Department in its
12 accusation. Accordingly, the court remanded the matter to the
13 Board for the sole purpose of reconsidering the penalty to be
14 imposed without considering the 15 uncharged violations of the
15 Vehicle Code. The court's remand order to the Board was narrow
16 and specific. The court did not instruct the Board to
17 reconsider the findings of fact with respect to the actual
18 knowledge of Mr. Doss, or the fact that the practice of
19 systematically altering invoices and using altered invoices in
20 the sale of vehicles was common knowledge among the employees of
21 Pittsburg Ford. Quite the contrary, the court found that there
22 was ample evidence in the record to support the Board's findings
23 of fact with respect to these issues.

24 8. On April 14, 1988 the Board met and reconsidered the
25 penalty in this matter pursuant to the order of remand from the
26 Superior Court. The decision of the Majority of the Board was
27 to impose the penalty of revocation of Appellant's occupational
28 license, but to stay the revocation and place Appellant's

1 license on probation for a term of five (5) years, subject to a
2 seven-day actual suspension and the standard terms and
3 conditions of probation which are normally imposed by the
4 Department. The Majority did however, impose an additional term
5 of probation that Appellant retain an automotive advisory
6 service to conduct a regular review of the transactions,
7 advertising and personnel conduct of the dealership. The
8 Majority decision removed from the Board's order any reference
9 to the requirement that Ford Motor Company participate actively
10 in the management of the dealership.

11 We concur in the findings as contained in the Order of the
12 Board After Remand. We must express our concerns as to the
13 propriety of the conduct of certain of our colleagues in the
14 decision of this case and we dissent in regard to the penalty
15 imposed.

16 DISCUSSION

17 18 1. The Motion to Disqualify filed by the Department of Motor Vehicles.

19 Prior to the Board meeting at which this matter was
20 reconsidered upon remand from the Superior Court, the Department
21 filed a challenge to the participation of a Board member. The
22 Department's challenge was based upon the allegation that this
23 particular Board member was biased against the Department due to
24 the fact the Department has filed accusations against his
25 occupational license as well as the fact that he was represented
26 in those matters by the same attorney who originally represented
27 Appellant in this matter. Although two members of the Board
28 voted to grant the Department's motion, a majority of the Board

1 voted to deny the motion on the merits. However, regardless of
2 whether there was a sufficient basis for denying the motion, the
3 issue is not whether the Board member was in fact capable of
4 rendering an impartial decision, but whether his decision will
5 be perceived to have been impartial and unbiased. We believe
6 that although the Majority of the Board voted not to grant the
7 motion to disqualify, a Board member challenged under such
8 circumstances should on his own motion recuse himself to prevent
9 any appearance of impropriety from arising.

10

11 2. Participation in the voting by Board members who were
12 not fully informed.

12

13 This matter was first before the Board on January 13, 1987
14 at which time the Board took additional evidence and heard oral
15 arguments. Some Board members were not present at that hearing
16 and, as a result, did not have the opportunity to evaluate
17 personally the credibility of the testimony. Further, some
18 Board members did not request nor did they have the opportunity
19 to review the original record of the proceedings before the
20 Department or the record of the proceedings before the Board at
21 its meeting of January 13, 1987. Nonetheless, these Board
22 members chose to participate in the proceedings on April 14,
23 1988.

24

25 The Order of Remand from the Superior Court indicated that
26 there was ample evidence to support the Board's prior findings
27 that Mr. Doss had actual knowledge of the fraud being
28 perpetrated, and the matter was remanded back to the Board only
to reconsider the penalty to be imposed without taking into

1 account uncharged violations. Some Board members, however,
2 proceeded to reopen that which had already been decided by the
3 Board and not disturbed by the Superior Court, that is, whether
4 Mr. Doss had actual knowledge of the fraud. This issue had been
5 put to rest and was not before the Board. Even if it were,
6 these Board members should have deferred to the decision of
7 those members who were present at the prior proceedings and
8 either accepted the findings as conclusive or recused themselves
9 from participation entirely. This is especially so considering
10 that they had no familiarity with the prior record.
11 Participation under these circumstances was not only
12 procedurally improper but certainly cannot be described as
13 reaching a decision on the facts and merits of the case. An
14 individual's decision, not being based on the record, leads one
15 to conclude that his decision was personally motivated. Even if
16 neither of these conclusions is accurate, the perception of
17 arbitrariness or outside influence exists and such Board members
18 were obligated to refrain from participating in order to avoid
19 any perception of impropriety.

20 Similarly, in the event that any Board member, either
21 accidentally or intentionally, should obtain information
22 concerning a dispute before the Board from a source other than
23 the administrative record, testimony, or argument presented
24 directly to the Board, then, in order to avoid even the
25 appearance of impropriety, that member should voluntarily recuse
26 himself from the discussion and decision of the matter.

27 / /

28 / /

1 3. The Department of Motor Vehicles was not given notice that
2 oral arguments would be permitted at the Board meeting on April
3 14, 1988.

4 The Appellant and amicus curiae had requested permission to
5 present oral arguments at the Board meeting scheduled for March
6 22, 1988. All parties to this matter were informed that oral
7 arguments would not be permitted. At the Board meeting, the
8 parties were permitted to address the Board informally.
9 However, the Majority expanded this opportunity to allow counsel
10 for Pittsburg Ford to present oral argument. Counsel for the
11 Department, although present, had not been informed that this
12 would be permitted and was thus not prepared to argue the merits
13 of this appeal. Therefore, the procedure utilized by the Board
14 with respect to permitting oral arguments denied the Department
15 of the opportunity to present its position effectively with
16 respect to the issue of the penalty to be imposed. Again, the
17 perception is one of unfairness in the Board's procedure.

18
19 4. The reduction in the penalty imposed cannot be justified or
20 reconciled.

21 The Majority of the Board has decided that Pittsburg Ford
22 engaged in intentional fraud, which continued over a long period
23 of time and as part of a deliberate premeditated scheme, done
24 with full knowledge of the dealer principal, condoned by the
25 dealer principal, participated in by the dealer principal, and
26 resulting in loss to members of the public. We concur in these
27 findings. They are the same findings that were made by the
28 Majority of the Board in its Final Order of February 23, 1987.

1 The Majority's decision after remand made no changes as to
2 any of the findings of fact, other than to exclude those
3 findings of violations which were not originally charged by the
4 Department in its accusation. The Board's original findings
5 were not disturbed by the order of remand from the Superior
6 Court. To the contrary, the Board's findings were all upheld by
7 the Superior Court as being supported by ample evidence.
8 Nonetheless, the Majority now holds that such conduct as
9 described above is not sufficient reason to revoke a dealer's
10 license.

11 The penalty meted out by the Majority on remand was merely a
12 stayed revocation with seven (7) days suspension and 5-year
13 probation of the occupational license, which amounts to
14 essentially the same penalty imposed by the Department's order.
15 The penalty imposed by the Board is nothing more than a slap on
16 the hand. It is also slapping a hand that but for getting
17 caught would still be pilfering the pockets of the public.

18 The Majority decision communicates the message to the
19 industry and the public that the Board protects its own, not the
20 taxpayers. It creates a tarnished precedent for future cases
21 before the Board.

22 Lastly, the decision of the Majority cannot be justified in
23 that it is a blatant example of unequal treatment of those who
24 appear before the Board. An allegation of inconsistency in
25 imposing discipline has already served as a basis for a prior
26 reversal by an appellate court of a Board order.

27 The inescapable inference to explain the refusal of the
28 Majority to impose a penalty commensurate with the misconduct

1 found to have occurred is that the members of the Majority
2 permitted political, social, or personal factors to interfere
3 with the exercise of good judgment.

4 Accordingly, we concur with the Majority of the Board with
5 respect to the findings of the Board as contained in the Final
6 Order After Remand, but we dissent with the Majority in regard
7 to the penalty imposed. The appropriate penalty in this matter
8 is revocation of the occupational license of Appellant.

9
10 Dated: *May 12, 1988*

Florence S. Post

FLORENCE S. POST
President

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12
13 Dated: May 12, 1988

Frank N. Ricchiazzi

FRANK N. RICCHIAZZI
Member

14
15
16 Dated: May 12, 1988

Liucija Mazeika

LIUCIJA MAZEIKA
Member

17
18
19 Dated: *May 19, 1988*

John B. Vandenberg

JOHN B. VANDENBERG
Member

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1 1507 - 21st Street, Suite 330
2 Sacramento, California 95814
3 (916) 445-1888

CERTIFIED MAIL

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7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD

9
10 In the Matter of the Appeal of)
11 Pittsburg Ford, Inc.,) Appeal No. A-98-86
12 Appellant,)
13 vs.) FINAL ORDER
14 Department of Motor Vehicles) AFTER REMAND
15 of the State of California,)
16 Respondent.)

17 1. This matter came before the Board as a result of an
18 Order of Remand issued by the Honorable Horace E. Cecchettini,
19 Judge of the Superior Court in and for the County of
20 Sacramento. The Order of Remand commands the Board to review
21 the penalty imposed by the Board's order of February 23, 1987,
22 without reference to the offenses that were not charged by the
23 Department of Motor Vehicles in its accusation.

24 2. In accordance with the Order of Remand, the Board
25 reconsidered the matter at its meeting of April 14, 1988. The
26 Board's Final Order of February 23, 1987 is hereby adopted in
27 its entirety and incorporated herein by reference except for
28 the following modifications:

1 A. Deleted is the sentence that begins "The Board
2 finds that in ..." on page 5, line 25 through page 6, line 14.

3 B. Paragraph 11(D), page 6, is modified to read: "The
4 amount by which invoices were raised ranged from \$100 to
5 \$1,000 with the majority being raised by \$1,000.

6 C. Paragraph 14, starting on page 8, is amended to
7 read as follows:

8 14. After consideration of all the evidence in the
9 record of the Department, the evidence admitted on January
10 13, 1987 at the hearing before the Board, but excluding the
11 evidence relating to uncharged offenses, and including the
12 briefs and oral arguments, it is hereby ordered that:

13 A. The decision of the Department is
14 amended to incorporate the findings and
15 determinations of the Board as stated herein.

16 B. The Department's Order of Revocation
17 is amended to read as follows:

18 (1.) Dealer's license and special plates
19 No. 2731 issued to Pittsburg Ford, Inc., a
20 corporation, are hereby revoked. However, a
21 probationary vehicle dealer's license and
22 special plates shall be issued to Pittsburg
23 Ford, Inc. subject to the following terms and
24 conditions:

25 (a) Pittsburg Ford, Inc. shall obey
26 all laws, rules, and regulations
27 pertaining to the exercise of the
28 privileges of it's probationary license;

1 (b) Pittsburg Ford, Inc. shall
2 retain Automotive Advisory Consulting
3 Service, or a comparable service, to
4 conduct regular review of the dealership
5 operations, sales transactions,
6 advertising and personnel conduct and
7 prepare a written report each month that
8 is submitted to Pittsburg Ford, Inc. and
9 directly to Ford Motor Company;

10 (C) Pittsburg Ford shall be actually
11 suspended from participating in any
12 transaction involving the sale of a new
13 motor vehicle for a period of seven (7)
14 days; and

15 (D) Any license and special plates
16 issued to Pittsburg Ford, Inc. during the
17 period of five (5) years from the
18 effective date of this decision shall be
19 issued as a probationary license subject
20 to all of the terms and conditions set
21 forth herein and that no cause for
22 disciplinary action or refusal to issue
23 had intervened.

24 2. In the event the Director shall
25 determine, after giving respondent due notice
26 and an opportunity to be heard, that Pittsburg
27 Ford, Inc. had violated any of the terms and
28 conditions under which the probationary

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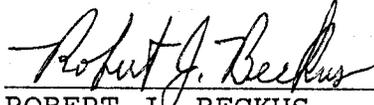
license and special plates were issued, the
director may, in his discretion, revoke or
suspend the probationary license.

D. Paragraph 15 on page 9 is deleted.

E. Paragraph 16 on page 9 is renumbered Paragraph 15 and is
amended to read: "This matter is remanded to the Department
for action consistent with this order."

NEW MOTOR VEHICLE BOARD

DATED 5 - 3 - 88


ROBERT J. BECKUS
Vice President

Joseph Remcho, Esq.
Kathleen J. Purcell, Esq.
Attorneys for Appellant

Alan Mateer, Esq.
Nancy L. Rasmussen, Esq.
Attorneys for Respondent

A. A. Pierce, Director, DMV
John Lancara, Acting Program Manager
Occupational Licensing, DMV

Legal Office, DMV

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3 (916) 445-1888
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

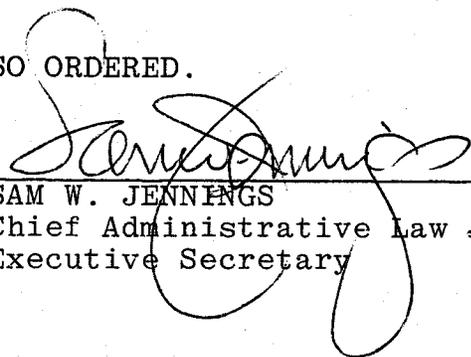
10 In the Matter of the Appeal of)
11 PITTSBURG FORD, INC.,) Appeal No. A-98-86
12)
13 Appellant,)
14 vs.)
15 DEPARTMENT OF MOTOR VEHICLES) NOTICE OF CLERICAL
16 OF THE STATE OF CALIFORNIA,) ERROR AND CORRECTION
17 Respondent.) OF FINAL ORDER

18 Notice is hereby given that the Final Order of the New
19 Motor Vehicle Board in the matter of the Appeal of Pittsburg
20 Ford, Inc. vs. Department of Motor Vehicles of the State of
21 California, dated February 23, 1987, on page 5, paragraph 11B,
22 line 12, should be corrected to read as follows:

23 "accusation was filed on April 10, 1986. All but
24 one of the specific"

25 SO ORDERED.

26 DATED: March 9, 1987

27 

SAM W. JENNINGS
Chief Administrative Law Judge/
Executive Secretary

1 1507 - 21st Street, Suite 330
2 Sacramento, California 95814
3 (916) 445-1888

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

10 In the Matter of the Appeal of)
11 Pittsburg Ford, Inc.,)
12 Appellant,)
13 vs.)
14 Department of Motor Vehicles)
15 of the State of California.)
16 Respondent.)

Appeal No. A-98-86
FINAL ORDER

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1. On April 10, 1986, the Department of Motor Vehicles, ("Department"), filed a formal accusation against Pittsburg Ford Inc. for alleged violations of the California Vehicle Code and Title 13 of the California Administrative Code. A hearing on the matter was held before Ruth S. Astle, Administrative Law Judge, Office of Administrative Hearings, in San Francisco, California on May 1, 2, 5, 6, 1986 and June 19, 1986. On July 3, 1986, the administrative law judge submitted a proposed decision which revoked the dealer's license and special plates of Pittsburg Ford. However the revocations were stayed subject to specified

1 conditions of probation. The administrative law judge's proposed
2 decision was adopted by the Department on July 11, 1986.

3 2. On August 15, 1986, Pittsburg Ford filed an appeal with
4 the New Motor Vehicle Board ("Board") pursuant to section 3052 of
5 the California Vehicle Code.

6 3. The appeal alleged the following:

7
8 A) That the Department proceeded without or in excess
9 of its jurisdiction [Vehicle Code section 3054(a)];

10
11 B) That the Department has proceeded in a manner
12 contrary to law [Vehicle Code section 3054(b)];

13
14 C) That the Department's decision is not supported by
15 the findings [Vehicle Code section 3054(c)];

16
17 D) That there was relevant evidence, which in the
18 exercise of reasonable diligence, could not have been
19 produced or which was improperly excluded at the
20 hearing [Vehicle Code section 3054(e)];

21
22 E) That the Department's determination or penalty, as
23 provided in the decision of the Department, is not
24 commensurate with the findings [Vehicle Code section
25 3054(f)].

26 4. Briefs were submitted to the Board by Pittsburg Ford
27 and the Department.¹ Pittsburg Ford requested and was granted

1 permission to present additional evidence before the Board.

2 5. A hearing was held before the Board on January 13, 1987
3 at which time the Board received further evidence and heard oral
4 arguments.

5 I

6 DETERMINATIONS OF THE BOARD

7
8 6. Vehicle Code section 3054 provides that the Board shall
9 have the power to reverse or amend the decision of the Department
10 if it determines that any of the following exist:

- 11 (a) The department has proceeded without or in excess of
12 its jurisdiction.
- 13 (b) The department has proceeded in a manner contrary to
14 the law.
- 15 (c) The decision is not supported by the findings.
- 16
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22 1 Despite the fact that the Notice of Appeal raised five (5)
23 grounds for review, the brief of Pittsburg Ford stated that,
24 "This appeal has been filed for the sole purpose of having the
25 Board review the terms of the five-year probation imposed by the
26 Department. In particular, Appellant invites the Board's
27 attention to Paragraph 1(b) of the order which Appellant contends
is unnecessary, unreasonable, unjust, and unsupported by the
findings." Paragraph 1(b) required that a representative of Ford
Motor Company must actively participate in the management,
direction and control of the dealership on a daily basis for the
five-year term of the probation.

- 1 (d) The findings are not supported by the weight of the
2 evidence in the light of the whole record reviewed in
3 its entirety, including any and all relevant evidence
4 adduced at any hearing of the board.
5
6 (e) There is relevant evidence, which in the exercise of
7 reasonable diligence, could not have been produced or
8 which was improperly excluded at the hearing.
9
10 (f) The determination or penalty, as provided in the
11 decision of the department is not commensurate with
12 the findings.

13 WHETHER THE DEPARTMENT HAS PROCEEDED WITHOUT OR IN EXCESS OF
14 ITS JURISDICTION [Vehicle Code section 3054(a)]

15 7. The Board finds that the Department did not proceed
16 without or in excess of its jurisdiction.

17 WHETHER THE DEPARTMENT PROCEEDED IN A MANNER CONTRARY TO
18 LAW. [Vehicle Code section 3054(b)]

19 8. The Board finds that the Department did not proceed in
20 a manner contrary to law.

21 WHETHER THE DEPARTMENT'S DECISION IS SUPPORTED BY THE
22 FINDINGS. [Vehicle Code section 3054(c)]

23 9. The Board finds that the Department's Decision is
24 supported by the findings.

25 WHETHER THE FINDINGS ARE SUPPORTED BY THE WEIGHT OF THE
26 EVIDENCE IN LIGHT OF THE WHOLE RECORD REVIEWED IN ITS
27 ENTIRETY, INCLUDING ANY AND ALL RELEVANT EVIDENCE ADDUCED AT
THE HEARING BEFORE THE BOARD. [Vehicle Code section
3054(d)]

10. It is determined that the findings of the Department

1 are supported by the weight of the evidence contained in the
2 record.

3 11. In addition to the findings of the Department, the
4 Board further finds as follows:

5
6 A. It is determined that Pittsburg Ford regularly
7 advertised "Invoice Sales." It is impossible to
8 determine the total number of buyers who were deceived
9 by altered invoices over the long period involved.

10

11 B. Tidwell began altering invoices in early 1984. The
12 accusation was filed on April 10, 1986. The specific
13 violations that were found to have occurred involved
14 transactions which took place during the time period
15 from January 3, 1986 through March 3, 1986, which was
16 immediately prior to the filing of the accusation.
17 This represents only two months of the two year period
18 during which Pittsburg Ford was engaged in altering
19 invoices.

20

21 C. Two of the transactions which occurred during the
22 above two-month period involved vehicles purchased by
23 U. S. Fleet Leasing, Inc. in February, 1986. The
24 Department found that violations had occurred in regard
25 to these two transactions. The Board finds that in
26 addition to the two February, 1986 transactions,
27 Pittsburg Ford fraudulently used altered invoices in

1 connection with the sale of 15 additional vehicles to
2 U. S. Fleet Leasing Inc. These 15 sales occurred on
3 the following dates:

4 January 3, 1985

5 February 7, 1985

6 March 12, 1985

7 April 2, 1985 (4 vehicles)

8 April 16, 1985

9 May 17, 1985

10 July 26, 1985 (2 vehicles)

11 August 22, 1985

12 October 18, 1985

13 February 11, 1986

14 March 5, 1986

15
16 D. The amounts by which these invoices were raised ranged
17 from \$202.93 to \$1,000 with the majority being raised
18 by \$300 or \$500. The total loss to U. S. Fleet Leasing
19 Inc. concerning these vehicles amounted to \$6123.25.

20
21 E. The victims of the specifically identified fraud
22 included individuals, corporations, and a bank, as well
23 as professional vehicle buyers such as U. S. Fleet
24 Leasing Co. and Gold Key Sales/Leasing, and a new car
25 salesman with 20 years of experience in the automotive
26 field in many capacities including managerial.

27 / /

1 F. The Board finds that it was common knowledge among the
2 employees of Pittsburg Ford that invoices were being
3 altered and fraudulently used to consummate sales.
4 Many employees personally witnessed the cutting,
5 pasting, and photocopying of invoices. During the time
6 period in which invoices were being altered, at least
7 three other individuals other than Tidwell engaged in
8 the practice of representing the altered invoices as
9 original invoices and thus defrauding consumers.

10
11 G. The Board finds that La Roy Doss, the President of
12 Pittsburg Ford, had actual knowledge of the practice
13 of altering invoices and actual knowledge of the fact
14 that the altered invoices were being used to
15 consummate sales.

16
17 H. Doss not only had knowledge of the altered invoices
18 but also had access to them. In addition, on at least
19 one instance Doss had the altered invoices in his
20 possession, and on at least one other occasion while
21 personally dealing with a customer in his office, Doss
22 specifically requested Tidwell to bring Doss one of
23 Tidwell's invoices. This request for Tidwell's
24 invoice was made while Doss was in his office with the
25 original unaltered invoice only six or seven steps away
26 from him. Tidwell's invoices (all of which were
27 altered) were in Tidwell's office which was at the rear

1 of the dealership, a considerable distance from Doss'
2 office.

3
4 WHETHER THERE WAS RELEVANT EVIDENCE WHICH IN THE EXERCISE OF
5 REASONABLE DILIGENCE, COULD NOT HAVE BEEN PRODUCED OR WAS
6 IMPROPERLY EXCLUDED AT THE HEARING. [Vehicle Code section
3054(e)]

7 12. One of the conditions of the issuance of a
8 probationary vehicle dealer's license and special plates was
9 that a representative of Ford Motor Company actively participate
10 in the management, direction and control of Pittsburg Ford on a
11 daily basis for the five year probationary term. Pittsburg Ford
12 established that Ford Motor Company will not abide by the term
13 of probation.

14
15 WHETHER THE DETERMINATION OR PENALTY, AS PROVIDED IN THE
16 DECISION OF THE DEPARTMENT IS COMMENSURATE WITH THE
17 FINDINGS [Vehicle Code section 3054(f)]

18 13. Except as indicated below, the Board determines that
19 the Department's penalty of revocation of the Vehicle Dealer's
20 license and special plates is commensurate with the findings.

21 ORDER AMENDING THE DECISION OF THE DEPARTMENT

22
23 14. After consideration of all of the evidence in the
24 record of the Department, as well as the evidence adduced at the
25 hearing before the Board on January 13, 1987, the briefs and oral
26 arguments in connection therewith, it is hereby ordered that:

27 / /

1 A. The decision of the Department is amended to
2 incorporate the findings and determinations of the
3 Board as stated herein.

4
5 B. The order of the Department's order of revocation is
6 amended to read as follows:

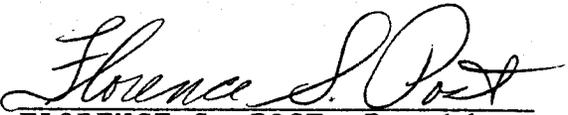
7
8 Dealer's license and special plates No. 2731 issued to
9 Pittsburg Ford, Inc., a corporation, are hereby
10 revoked.

11
12 15. The owners of Pittsburg Ford shall be given a period of
13 one year to either sell the dealership or otherwise dispose of
14 their interests therein. This one-year period is intended to
15 provide Ford Motor Company with sufficient time to locate a
16 qualified person to replace Pittsburg Ford so that any adverse
17 effect on the innocent employees of Pittsburg Ford and the
18 community will be minimized.

19 16. This matter is remanded to the Department for fixing
20 the effective date of this order consistent with the preceding
21 paragraph.

22
23 NEW MOTOR VEHICLE BOARD

24
25 Dated Feb. 23, 1987


26 FLORENCE S. POST, President

27

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2 Sacramento, California 95814
3 Telephone (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Protest of)
12 PALOMAR LEASE and RENTAL, INC.,)
13 A Corporation, dba Bruce Canepa)
14 Motorcars,)
15 Appellant,)
16 vs.)
17 DEPARTMENT OF MOTOR VEHICLES)
18 OF THE STATE OF CALIFORNIA,)
Respondent.)

Appeal No. A-99-86

ORDER

19 ATTORNEY FOR APPELLANT

20 To: Ernest S. Pierucci, Esq.
21 Pierucci & Tonsing
22 1800 Harrison, 11th Floor
23 Oakland, CA 94612
(415) 465-5559

24 ATTORNEY FOR RESPONDENT

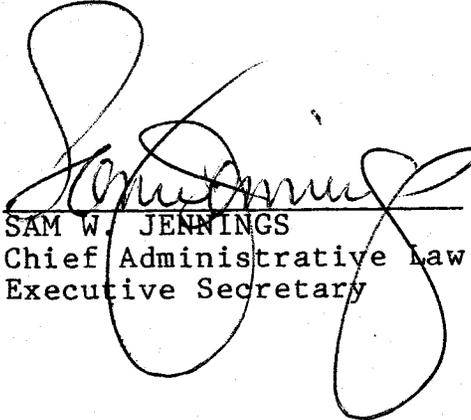
25 Bernard Lu, Esq.
26 Staff Counsel
27 Department of Motor Vehicles
2415 - 1st Avenue
Post Office Box 11828
Sacramento, CA 95853
(732) 732-7630

1 This matter is before the Board as the result of
2 an appeal by Appellant from an order by the Department of
3 Motor Vehicles, revoking Appellant's dealer license and
4 special plates, Number 2676.

5 After consideration of all of the evidence in the
6 record and the oral and written arguments of counsel, the
7 Board has determined, pursuant to subsections (c) and (d) of
8 section 3054 of the Vehicle Code, that 1) the decision is
9 not supported by the findings, and 2) that the findings are
10 not supported by the weight of the evidence in the light of
11 the whole record reviewed in its entirety, including any and
12 all relevant evidence adduced at any hearing of the Board.
13 It is hereby ordered that Appellant's license remain in
14 effect and that the decision of the Department of Motor
15 Vehicles is reversed.

16 This order shall become effective as of this date.
17 DATED: September 30, 1987 NEW MOTOR VEHICLE BOARD

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by 
SAM W. JENNINGS
Chief Administrative Law Judge/
Executive Secretary

A. A. Pierce, Director, DMV
Roy Lundgren, Program Manager
Occupational Licensing, DMV
Legal Office, DMV

1 NEW MOTOR VEHICLE BOARD
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2 Sacramento, California 95814
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Appeal of)
12 KING BUICK, formerly JERRY BUICK,) Appeal No. A-100-87
13 INC.,)
14 Protestant,)
15 vs.) ORDER OF DISMISSAL
16 DEPARTMENT OF MOTOR VEHICLES,)
17 Respondent.)

18 TO: Lawrence Silver, Esq.
19 Attorney for Appellant
20 9100 Wilshire Boulevard
Suite 360
21 Beverly Hills, California 90212

22 Alan Mateer, Esq.
23 Chief Counsel for Respondent
Legal Office
24 Department of Motor Vehicles
Post Office Box 932328
Sacramento, California 94232-3280
25

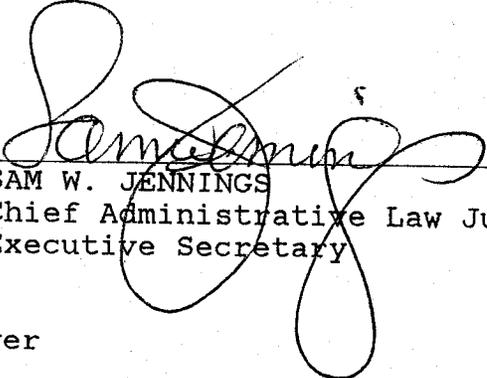
26 On October 4, 1988, the Board issued a Notice Of Intention
27 To Dismiss Appeal absent a showing of good cause for this matter
28 to remain pending before the Board.

1 No response having been made to the above, the appeal of
2 King Buick, formerly Jerry Buick, Inc., vs. Department of Motor
3 Vehciles, Appeal No. A-100-87 is hereby dismissed.

4
5 SO ORDERED.

6
7 DATED: November 7, 1988

NEW MOTOR VEHICLE BOARD

8
9
10 By 
11 SAM W. JENNINGS
12 Chief Administrative Law Judge/
Executive Secretary

13 A. A. Pierce, Director, DMV
14 John Lancara, Acting Program Manager
Occupational Licensing, DMV

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Appeal of)

12 JACKSON BUICK PONTIAC, INC.,)
13 A Corporation,)

14 Appellant,)

15 vs.)

16 DEPARTMENT OF MOTOR VEHICLES,)

17 Respondent.)

Appeal No. A-101-87

ORDER OF DISMISSAL

18 TO: Mr. Clarence Jackson
19 Appellant
20 415 East Minor Street
Stockton, California 95201

21 Alan Mateer, Esq.
22 Chief Counsel for Respondent
Legal Office
23 Department of Motor Vehicles
Post Office Box 932328
24 Sacramento, California 94232-3280

25 NOTICE OF INTENTION to Dismiss Appeal was given on October
26 7, 1988. No show of good cause has been made by

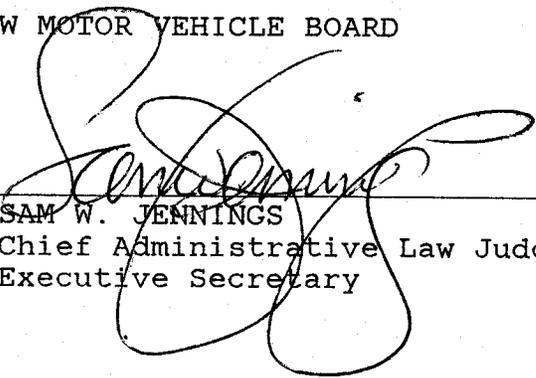
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28 //

1 either side as to why the Appeal should not be dismissed.
2 Accordingly, the Appeal in the above-entitled matter is hereby
3 dismissed. There will be no further proceedings in this
4 cause before the New Motor Vehicle Board.

5
6 DATED: December 2, 1988

NEW MOTOR VEHICLE BOARD

7
8
9 By 
10 SAM W. JENNINGS
11 Chief Administrative Law Judge/
12 Executive Secretary

13 A. A. Pierce, Director, DMV
14 John Lancara, Acting Program Manager
15 Occupational Licensing, DMV
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2 1507 - 21st Street, Suite 330
3 Sacramento, California 95814
4 Telephone: (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

10
11 In the Matter of the Appeal of)
12 EL CAJON MOTORS, INC. dba) Appeal No. A-102-89
13 EL CAJON FORD,)
14 Appellant,) ORDER OF THE BOARD
15 vs.)
16 DEPARTMENT OF MOTOR VEHICLES,)
17 Respondent.)

18 TO: Marguerite Mary Leoni, Esq.
19 650 California Street, Suite 2650
20 San Francisco, California 94108

21 Paul H. Dobson, Esq.
22 770 L Street, Suite 800
23 Sacramento, California 95814

24 Alan Mateer, Esq. ✓
25 Chief Counsel
26 Legal Office DMV
27 P.O. Box 932382
28 Sacramento, California 94232-3820

1 On October 20, 1989, the Public Members of the New
Motor Vehicle Board met and took action in regard to the above
captioned appeal.

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ORDER

The Board orders that the matter be remanded to the Department of Motor Vehicles for further action pursuant to the stipulated request for remand.

The Board retains jurisdiction to hear the appeal should this matter not be resolved between the parties.

IT IS SO ORDERED.

DATED: October 20, 1989

NEW MOTOR VEHICLE BOARD

By: Robert J. Beckus
ROBERT J. BECKUS
President

A. A. Pierce, Director, DMV
John Lancara, Acting Program Manager
Occupational Licensing, DMV

NMVB

RECEIVED
NOV 15 1989
New Motor Vehicle Board

FILED
DEPT. OF MOTOR VEHICLES
NOV 09 1989
BY *L. J. Johnson*

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STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of)	
EL CAJON MOTORS,)	CASE NO. D-3564
A Corporation, dba)	
EL CAJON FORD,)	ORDER AFTER REMAND
)	
)	
Respondent.)	

WHEREAS, the New Motor Vehicle Board has remanded this matter to the Department of Motor Vehicles for further action pursuant to the Stipulated Request for Remand of the parties; and

WHEREAS, the Department of Motor Vehicles and Respondent have entered into the attached Stipulation and Waiver;

THEREFORE, IT IS HEREBY ORDERED that the Decision filed on January 18, 1989 is modified to delete the Order and substitute therefor the Order set forth in the attached Stipulation and Waiver. The Decision, as so modified, shall become effective on November 14, 1989.

DATED: NOV 09 1989 .

A. A. Pierce
A. A. PIERCE
Director

FILED
 DEPT. OF MOTOR VEHICLES
 NOV 09 1989
 BY *S. J. Johnson*

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STATE OF CALIFORNIA
 DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of) EL CAJON MOTORS,) A Corporation, dba) EL CAJON FORD,) <div style="text-align: right; padding-right: 10px;">Respondent.)</div>)	CASE NO. D-3564 STIPULATION AND WAIVER
--	---	--

WHEREAS, the Decision of the Director of Motor Vehicles was filed on January 18, 1989; and

WHEREAS, an appeal of said Decision was filed by Respondent with the New Motor Vehicle Board; and

WHEREAS, pursuant to the Stipulated Request for Remand of the parties, the New Motor Vehicle has remanded this matter to the Department of Motor Vehicles (hereinafter the Department) for further action;

THEREFORE, the Department and Respondent do hereby stipulate that:

(a) Respondent waives the right, in the above-entitled matter, to any further hearing or reconsideration, any and all appeals, and all rights which may be afforded pursuant to the Vehicle Code, the Administrative Procedure Act, or any other provision of law.

///

1 (b) The Order contained in the Decision filed on
2 January 18, 1989 shall be deleted, and, in lieu thereof, the
3 following Order shall be entered by the Director of Motor
4 Vehicles.

5 ORDER

6 The dealer's license and special plates no. 13492,
7 heretofore issued to Respondent, EL CAJON MOTORS, A Corporation,
8 dba EL CAJON FORD, are hereby suspended for a period of fifteen
9 (15) days; provided however, that eight (8) days of said
10 suspension are stayed for a period of two (2) years under the
11 following terms and conditions:

12 (1) Respondent's license and special plates shall be
13 suspended for a period of seven (7) days. Respondent has
14 the option to pay to the Department a monetary penalty of
15 \$5,000 per day in lieu of serving up to five (5) days of
16 said suspension. Respondent elects to pay a monetary
17 penalty of \$25,000, thereby reducing the actual
suspension to a period of two (2) days. The suspension
of Respondent's license and special plates shall occur on
November 14 and 15, 1989, and during said period
Respondent shall not exercise any of the privileges
granted under the license and special plates.

18 (2) Respondent further agrees that if, in connection
19 with any advertising, representation, or dissemination
20 made to the public or any member thereof during the
21 period of actual suspension, such advertising,
22 representation, or dissemination states or reasonably
23 implies that Respondent's dealer's license has or is
24 suspended for any reason other than by order of the
Department, such advertising, representation, or
dissemination shall be deemed to be untrue or misleading
advertising within the meaning of Vehicle Code Section
11713(a) and shall also be deemed a violation of the
conditions of probation as agreed herein.

25 (3) During the period of actual license suspension,
26 Department employees shall post notices of suspension, in
27 accordance with the provisions of Section 421.00 of Title
13 of the California Code of Regulations. Removal of
these notices prior to the termination of suspension
shall be deemed a violation of the conditions of

1 probation.

2 (4) Respondent shall obey all the laws of the United
3 States, the State of California, or its subdivisions, and
4 the rules and regulations of the Department of Motor
5 Vehicles now or hereafter in effect. If any of
6 Respondent's officers, directors or stockholders, if such
7 stockholders are active in the management, direction or
8 control of Respondent's licensed activity, are convicted
9 of a felony or a crime involving moral turpitude,
10 including a conviction after a plea of not guilty or nolo
11 contendere, such conviction shall be considered a
12 violation of the terms and conditions of any probationary
13 license issued to Respondent.

14 (5) Any license issued to Respondent during a period of
15 two (2) years shall be issued as a probationary license
16 and then only if it is determined that Respondent has
17 fully complied with the terms and conditions hereof and
18 that no cause for refusal to issue, suspend or revoke has
19 intervened or exists.

20 (6) Respondent shall permit free and ready access to
21 business records pertaining to the purchase, sale, rental
22 or leasing of vehicles at the request of a departmental
23 investigator during normal business hours and without
24 prior notice.

25 (7) Respondent shall pay to the Department the sum of
26 \$30,000 as a monetary penalty. Said amount, as well as
27 the monetary penalty of \$25,000 set forth in condition
(1) above, shall be paid to the Department of Motor
Vehicles, Accounting Section, P. O. Box 932382,
Sacramento, CA 94232-3820, within 30 days of the
effective date of the Decision in this matter.

(8) Should the Director of Motor Vehicles at any time
during the existence of said probationary license or the
renewal thereof, determine upon satisfactory evidence
that the Respondent has violated any of the terms and
conditions under which said license was issued, the
Director may, after notice and hearing, vacate the stay
order and reimpose the stayed portion of the penalty; and
if no such determination is made, the stay shall become
permanent.

28 DATED: 11-8-89


29 PAUL F. LEADER,
30 President, Respondent

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DATED: November 8, 1989 .

Marguerite Mary Leoni
MARGUERITE MARY LEONI,
Attorney for Respondent

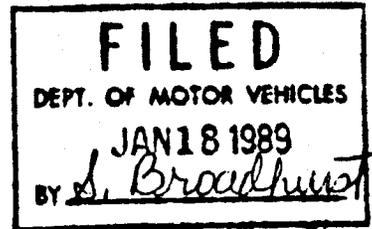
DATED: 11-9-89 .

for Diane Byrnes
JOHN C. LANCARA,
Acting Program Manager,
Division of Investigations
and Occupational Licensing

DATED: 11/9/89 .

Nancy L. Rasmussen
NANCY L. RASMUSSEN,
Senior Staff Counsel
Department of Motor Vehicles

ORIGINAL



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STATE OF CALIFORNIA

DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation)
Of:)
EL CAJON MOTORS,)
A Corporation, dba)
EL CAJON FORD,)
Respondent)

CASE NO. D-3564
OAH NO. L-41851

DECISION

WHEREAS, the PROPOSED DECISION in this matter was served upon the Respondent in accordance with Government Code Section 11517(b); and

WHEREAS, the Respondent was notified by a NOTICE CONCERNING PROPOSED DECISION that the Department considered, but did not adopt the PROPOSED DECISION; and

WHEREAS, Respondent was afforded the opportunity to and did present oral argument; and

WHEREAS, the Director of Motor Vehicles has considered the oral argument and the record, including the transcript, and now finds that:

GOOD CAUSE APPEARING THEREFOR, the PROPOSED DECISION of the Administrative Law Judge is hereby adopted as the DECISION in this matter except for DETERMINATION OF ISSUES III, and the ORDER, which are not adopted and the following are substituted therefor:

1 DETERMINATION OF ISSUES

2 III

3 By reason of the evidence or rehabilitation, a conditioned
4 revocation of Respondent's license is determined not to be
5 against the public interest. However, the seriousness of
6 Respondent's fraud and deceit upon purchasers, and the failure of
7 Respondent's top management to prevent further fraud after two
8 warnings by a department investigator and one small claims
9 judgment, require that an actual suspension of Respondent's
10 license be imposed as a condition of probation.

11 ORDER

12 The dealer's license and special plates No. 13492, issued to
13 respondent are revoked, separately and severally by reason of
14 each of Determination of Issues II A, II B, and II C, and are
15 revoked in the aggregate by reason of Determination of Issues II
16 D, II E, and II F; provided, however, that said revocation is
17 stayed for a period of 3 years on the following terms and
18 conditions of probation:

19 1. Respondent's license and special plates shall be
20 suspended for a period of 10 days from the effective date of this
21 Decision and during said period Respondent shall not exercise any
22 of the privileges granted under the license and special plates.

23 2. During the period of suspension any advertising,
24 representation, or dissemination made to the public or any member
25 thereof which states or reasonably implies that Respondent's
26 dealer's license has been or is suspended for any reason other
27 than by order of the Department, such advertising,

1 representation, or dissemination shall be deemed to be untrue or
2 misleading advertising within the meaning of Vehicle Code Section
3 11713(a) and shall also be deemed a violation of probation.

4 3. During the period of actual license suspension,
5 Department employees shall post notices of suspension, in
6 accordance with the provisions of Section 421.00 of Title 13 of
7 the California Code of Regulations. Removal of these notices
8 prior to the termination of suspension shall be deemed a
9 violation of probation.

10 4. Respondent shall obey all the laws of the United States,
11 the State of California, or its subdivisions, and the rules and
12 regulations of the Department of Motor Vehicles now or hereafter
13 in effect. If any of Respondent's officers, directors or
14 stockholders, if such stockholders are active in the management,
15 direction or control of Respondent's licensed activity, are
16 convicted of a felony or a crime involving moral turpitude,
17 including a conviction after a plea of not guilty or nolo
18 contendere, such conviction shall be considered a violation of
19 the terms and conditions of any probationary license issued to
20 Respondent.

21 5. Respondent shall permit free and ready access to business
22 records pertaining to the purchase, sale, rental or leasing of
23 vehicles at the request of a departmental investigator during
24 normal business hours and without prior notice.

25 6. Any license issued to Respondent during a period of 3
26 years shall be issued as a probationary license and then only if
27 it is determined that Respondent has fully complied with the

1 terms and conditions hereof and that no cause for refusal to
2 issue, suspend or revoke has intervened or exists.

3 7. Should the Director of Motor Vehicles at any time during
4 the existence of said probationary license or the renewal
5 thereof, determine upon satisfactory evidence that the Respondent
6 has violated any of the terms and conditions under which said
7 license was issued, the Director may, after notice and hearing,
8 vacate the stay order and reimpose the revocation; and if no such
9 determination is made, the stay shall become permanent.

10

11 This DECISION shall become effective FEB 17 1989

12

13 DATED: JAN 17 1989

14

15


A. A. PIERCE
Director

16

17

18

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26 |

27

1 NEW MOTOR VEHICLE BOARD
2 1507 - 21st Street, Suite 330
3 Sacramento, California 95814
4 Telephone: (916) 445-1888

CERTIFIED MAIL

5
6
7
8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Appeal of)
12 BRETT MITCHELL CHEVROLET, INC.,) Appeal No. A-103-89
13 Appellant,)
14 vs.)
15 DEPARTMENT OF MOTOR VEHICLES,) ORDER GRANTING
16 Respondent.) RESPONDENT'S MOTION
17) TO DISMISS APPEAL and
) ORDER OF DISMISSAL

18 TO: Mark A. Geiger, Esq.
19 Attorney for Appellant
20 Lawler, Felix & Hall
21 700 South Flower Street
Suite 3000
Los Angeles, California 90017

22 Alan Mateer, Esq., Chief Counsel; Gloriette C. Fong, Esq.,
Staff Counsel
23 Attorneys for Respondent
Legal Office
24 Department of Motor Vehicles
Post Office Box 932382
25 Sacramento, California 94232-3820

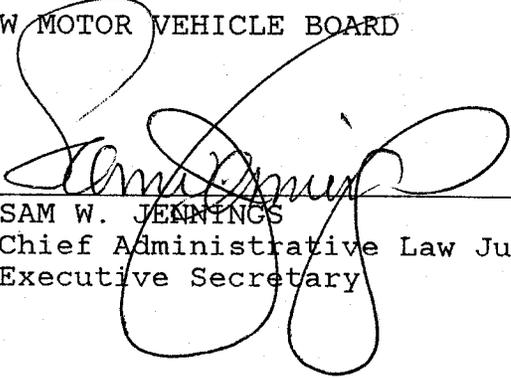
26 RESPONDENT'S MOTION TO DISMISS Appeal is granted.
27
28

1 The Appeal of Brett Mitchell Chevrolet, Inc., vs.
2 Department of Motor Vehicles, Appeal No. A-103-89, before the
3 New Motor Vehicle Board is hereby dismissed.

4 SO ORDERED,

5
6 DATED: March 29, 1990

NEW MOTOR VEHICLE BOARD

7
8
9 By 
10 SAM W. JENNINGS
11 Chief Administrative Law Judge/
12 Executive Secretary

13 Legal Office, DMV
14 A. A. Pierce, Director, DMV
15 John Lancara, Acting Program Manager
16 Occupational Licensing, DMV
17
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1 NEW MOTOR VEHICLE BOARD
2 1507 - 21st Street, Suite 330
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4 Telephone: (916) 445-1888
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Appeal of)
12 CASTLE MOTORS, INC.,) Appeal No. A-104-89
13 dba HARBOR AMC/JEEP/RENAULT,)
14 Appellant,)
15 vs.) ORDER OF DISMISSAL
16 DEPARTMENT OF MOTOR VEHICLES,)
17 Respondent.)

18 TO: Michael J. Flanagan, Esq.
19 Attorney for Appellant
20 Coder, Tuel & Flanagan
21 8801 Folsom Boulevard
Suite 172
Sacramento, California 95826
22 Alan Mateer, Esq., Chief Counsel; Bernard Lu, Esq.,
23 Staff Counsel
24 Attorneys for Respondent
25 Legal Office
Department Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

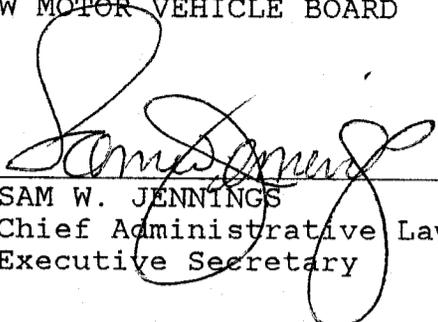
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RESPONDENT'S MOTION TO DISMISS Appeal is granted.
The appeal is hereby dismissed.

DATED: August 30, 1989

NEW MOTOR VEHICLE BOARD

By 
SAM W. JENNINGS
Chief Administrative Law Judge/
Executive Secretary

A. A. Pierce, Director, DMV
John Lancara, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

1 NEW MOTOR VEHICLE BOARD
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4 Telephone: (916) 445-1888

CERTIFIED MAIL

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7
8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Appeal of)
12)
13 MANCINI MOTORS, INC., A Corporation) Appeal No. A-105-89
14 dba SUNNYVALE CHRYSLER-PLYMOUTH,)
15)
16 Appellant,)
17)
18 vs.) ORDER REVERSING DECISION
19)
20 DEPARTMENT OF MOTOR VEHICLES,)
21)
22 Respondent.)
23)
24)
25)
26)

27 TO: Richard A. Wood, Esq., Edward Lee, Esq.
28 Attorneys for Appellant
McKeehan, Bernard & Wood
39650 Liberty Street
Suite 300
Fremont, California 94538

Alan Mateer, Esq., Chief Counsel
Nancy L. Rasmussen, Esq., Senior Staff Counsel
Attorneys for Respondent
Legal Office
Department of Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

The Appeal of Mancini Motors, Inc., A Corporation dba
Sunnyvale Chrysler-Plymouth vs. Department of Motor Vehicles,

1 Appeal No. A-105-89, was heard by the New Motor Vehicle Board at
2 its meeting of March 28, 1990.

3 After consideration of the administrative record, the
4 briefs filed by the parties, the evidence adduced at the
5 hearing, and the arguments of counsel, the Board determined that:

6 1. The findings are not supported by the weight of
7 the evidence in light of the whole record, including the
8 evidence adduced at the hearing before the Board, and

9 2. The decision is not supported by the findings.

10 The Board therefore orders that the decision of the
11 Department is reversed and the penalty imposed by the Department
12 is reversed.

13 This order shall become effective on May 1, 1990.

14
15 SO ORDERED.

16
17 DATED: April 3, 1990

NEW MOTOR VEHICLE BOARD

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By John Vandenberg
JOHN B. VANDENBERG
President

A. A. Pierce, Director, DMV
John Lancara, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

1 NEW MOTOR VEHICLE BOARD
2 1507 - 21st Street, Suite 330
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CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Appeal of)
12 PIONEER OLDSMOBILE CO., INC., dba) Appeal No. A-106-89
13 PIONEER HYUNDAI,)
14 Appellant,)
15 vs.) ORDER MODIFYING PENALTY
16 DEPARTMENT OF MOTOR VEHICLES,)
17 Respondent.)

18
19 TO: James G. Lewis, Esq., Cheri B. Lemons, Esq.
20 Attorneys for Appellant
21 Gilbert, Kelly, Crowley & Jennett
22 1200 Wilshire Boulevard, Sixth Floor
23 Los Angeles, California 90017

24 Alan Mateer, Esq., Chief Counsel
25 Bernard Lu, Esq., Staff Counsel
26 Attorneys for Respondent
27 Legal Office
28 Department of Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

29 The appeal of Pioneer Oldsmobile Co., Inc., dba
30 Pioneer Hyundai vs. Department of Motor Vehicles, Appeal No.
31 A-106-89, was heard by the New Motor Vehicle Board at its

1 meeting of March 28, 1990.

2 The Board considered the administrative record, the
3 briefs filed by the parties, and the arguments of counsel.

4 The Board specifically took into consideration the
5 following:

6 1. The length of time that appellant has been a
7 licensee and that appellant has not previously been subject to
8 discipline; and

9 2. The individual who authorized the conduct giving
10 rise to the accusation is no longer employed by the appellant.

11 After consideration of the above, the Board determined
12 that the penalty as provided in the decision of the department
13 is not commensurate with the findings.

14 The Department's order is modified as follows:

15 The dealer's license and special plates no. D-1947 issued to
16 appellant Pioneer Oldsmobile Co., Inc., dba Pioneer Hyundai, are
17 suspended for a period of five (5) days; provided however, that
18 said suspension is stayed for a period of one (1) year under the
19 following terms and conditions:

20 (1) Appellant shall, with respect to the allegation
21 contained in Paragraph III of the Accusation, do the following
22 within ten (10) days of the effective date of this order:

23 (a) Rescind and cancel the February 9, 1989
24 sale of the 1988 Hyundai (VIN: KMHLA2J7JU257014) to Gary Steiner.

25 (b) Cause the Ownership Certificate on the
26 vehicle and any sums collected as down payment or any other
27 payment on the conditional sales contract to be remitted to the
28 trustee in bankruptcy for Grand Motors, Irving Sulmeyer.

1 meeting of March 28, 1990.

2 The Board considered the administrative record, the
3 briefs filed by the parties, and the arguments of counsel.

4 The Board specifically took into consideration the
5 following:

6 1. The length of time that appellant has been a
7 licensee and that appellant has not previously been subject to
8 discipline; and

9 2. The individual who authorized the conduct giving
10 rise to the accusation is no longer employed by the appellant.

11 After consideration of the above, the Board determined
12 that the penalty as provided in the decision of the department
13 is not commensurate with the findings.

14 The Department's order is modified as follows:
15 The dealer's license and special plates no. D-1947 issued to
16 appellant Pioneer Oldsmobile Co., Inc., dba Pioneer Hyundai, are
17 suspended for a period of five (5) days; provided however, that
18 said suspension is stayed for a period of one (1) year under the
19 following terms and conditions:

20 (1) Appellant shall, with respect to the allegation
21 contained in Paragraph III of the Accusation, do the following
22 within ten (10) days of the effective date of this order:

23 (a) Rescind and cancel the February 9, 1989
24 sale of the 1988 Hyundai (VIN: KMHLA2J7JU257014) to Gary Steiner.

25 (b) Cause the Ownership Certificate on the
26 vehicle and any sums collected as down payment or any other
27 payment on the conditional sales contract to be remitted to the
28 trustee in bankruptcy for Grand Motors, Irving Sulmeyer.

1 (c) Pay restitution to Gary Steiner in the sum
2 of \$2,500.00

3 (d) Appellant must submit proof of compliance
4 with the above three requirements to the Legal Office of the
5 Department of Motor Vehicles within thirty (30) days of the
6 effective date of this order.

7 (2) Appellant shall obey all the laws of the United
8 States, the State of California, and its subdivisions, and the
9 rules and regulations of the Department of Motor Vehicles now or
10 hereafter in effect. If any of appellant's officers, directors
11 or stockholders, if such stockholders are active in the
12 management, direction or control of appellant's licensed
13 activity, are convicted of a felony or a crime involving moral
14 turpitude, including a conviction after a plea of not guilty or
15 nolo contendere, such conviction shall be considered a violation
16 of the terms and conditions of any probationary license issued
17 to appellant.

18 (3) Any license issued to appellant during a period
19 of one (1) year shall be issued as a probationary license and
20 then only if it is determined that appellant has fully complied
21 with the terms and conditions hereof and that no cause for
22 refusal to issue, suspend or revoke has intervened or exists.

23 ///

24 ///

1 (c) Pay restitution to Gary Steiner in the sum
2 of \$2,500.00

3 (d) Appellant must submit proof of compliance
4 with the above three requirements to the Legal Office of the
5 Department of Motor Vehicles within thirty (30) days of the
6 effective date of this order.

7 (2) Appellant shall obey all the laws of the United
8 States, the State of California, and its subdivisions, and the
9 rules and regulations of the Department of Motor Vehicles now or
10 hereafter in effect. If any of appellant's officers, directors
11 or stockholders, if such stockholders are active in the
12 management, direction or control of appellant's licensed
13 activity, are convicted of a felony or a crime involving moral
14 turpitude, including a conviction after a plea of not guilty or
15 nolo contendere, such conviction shall be considered a violation
16 of the terms and conditions of any probationary license issued
17 to appellant.

18 (3) Any license issued to appellant during a period
19 of one (1) year shall be issued as a probationary license and
20 then only if it is determined that appellant has fully complied
21 with the terms and conditions hereof and that no cause for
22 refusal to issue, suspend or revoke has intervened or exists.

23 ///

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NMVB

FILED
DEPT. OF MOTOR VEHICLES
NOV 7 1991
By *Chris [unclear]*

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New Motor Vehicle Board
NOV 12 1991

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of

KIM-HANKEY HYUNDAI, INC.,
A Corporation,

CASE NO. D-3813
OAH NO. L-46480

ORDER IMPLEMENTING
DECISION

Respondent.

Pursuant to the Request for Dismissal and Stipulated Settlement of the Superior Court of California, County of Sacramento, Case No. 364779, the Decision in the above-entitled matter is hereby dismissed with prejudice.

The Decision in the above-entitled matter shall become effective upon filing as a public record.

DATED: OCT 30 1991

Frank S. Zolin
FRANK S. ZOLIN
Director

1 NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Appeal of)
12 KIM-HANKEY HYUNDAI, INC.,) Appeal No. A-107-89
13 Appellant,)
14 vs.) FINAL ORDER
15 DEPARTMENT OF MOTOR VEHICLES,)
16 Respondent.)
17

18 TO: James G. Lewis, Esq.
19 Attorney for Appellant
20 Gilbert, Kelly, Crowley & Jennett
21 1200 Wilshire Boulevard
22 Sixth Floor
23 Los Angeles, California 90017

24 Alan Mateer, Esq., Chief Counsel
25 Attorney for Respondent
26 Department of Motor Vehicles
27 Legal Office
28 Post Office Box 932382
Sacramento, California 94232-3820

29 Marilyn Schaff, Assistant Chief Counsel
30 Randal E. Bates, Esq., Staff Counsel
31 Attorneys for Respondent
32 Department of Motor Vehicles
33 Legal Office
34 107 South Broadway, Suite 2012
35 Los Angeles, California 90012

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CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Appeal of)
12 TORVICK INVESTMENT CO., dba) Appeal No. A-108-90
SANTA ROSA NISSAN,)
13)
Appellant,)
14)
vs.) FINAL ORDER
15)
DEPARTMENT OF MOTOR VEHICLES,)
16)
Respondent.)
17)

18
19 TO: Charles Michaelis, Esq.
Attorney for Appellant
Michaelis & Bonanni
20 300 North Tustin Avenue, Suite 200
Santa Ana, California 92705

21 Alan Mateer, Esq., Chief Counsel
22 Marilyn Schaff, Esq., Assistant Chief Counsel
Bernard Lu, Esq., Staff Counsel
23 Attorneys for Respondent
Department of Motor Vehicles
24 Legal Office
Post Office Box 932382
25 Sacramento, California 94232-3820

26
27 On July 11, 1990, the New Motor Vehicle Board met and
28 considered the above-entitled matter. After considering the

1 administrative record, the additional evidence adduced at the
2 Board meeting, and the briefs and arguments of counsel for the
3 parties, it is hereby ordered that page 11 of the decision of
4 the Director of the Department of Motor Vehicles, dated November
5 29, 1989, is modified as follows:

6 ORDER

7 The vehicle dealer's license and special plates number
8 D-02020 issued to Torvick Investment Co., Inc., dba Santa Rosa
9 Nissan, is revoked, subject to the following conditions:

10 The license revocation shall not occur until one (1)
11 year after the completion or termination of the Chapter 11
12 United States Bankruptcy proceedings in which the dealer is
13 currently involved. This one-year period is intended to permit
14 time for the sale of the dealership. Upon completion or
15 termination of the Bankruptcy proceedings, neither Martin
16 Cavallero, Ernest Grob, nor James Krammerer shall be permitted
17 to have any direct or indirect involvement with the operation of
18 the dealership. For a period of five (5) years commencing upon
19 the sale of the dealership or the revocation of the license,
20 whichever occurs first, neither Cavallero, Grob, nor Krammerer
21 shall be permitted to obtain from the Department of Motor
22 Vehicles an occupational license as a new motor vehicle dealer,
23 manufacturer, distributor, representative, or salesman, nor
24 shall they be permitted during this same 5-year period to have
25 any ownership interest in a new motor vehicle dealership in the
26 State of California.

27 / /

1 After the conclusion of this 5-year period, it shall be up to
2 the discretion of the Department of Motor Vehicles as to whether
3 any of these individuals shall be permitted to acquire such a
4 license.

5
6 DATED: July 12, 1990

7
8 By John B. Vandenberg
9 JOHN B. VANDENBERG
10 President
11 NEW MOTOR VEHICLE BOARD
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26 A. A. Pierce, Director, DMV
27 John Lancara, Acting Program Manager
28 Occupational Licensing, DMV
Legal Office, DMV

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3 Sacramento, California 95814
4 Telephone: (916) 445-1888

CERTIFIED MAIL

8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

11 In the Matter of the Appeal of)

12 SAN JOSE NISSAN; ALMADEN TOYOTA;)
13 ALMADEN PONTIAC, dbaALMADEN)
14 DAIHATSU; ALMADEN HYUNDAI;)
15 DANHO CORPORATION, dba)
16 ALMADEN HONDA; CERRITO CHEVROLET;)
17 CMC OLDSMOBILE CADILLAC, dba)
18 CMC OLDSMOBILE CADILLAC; and)
19 CERRITO MOTORCOACH LIMITED,)

Appellants,)

vs.)

20 DEPARTMENT OF MOTOR VEHICLES,)

Respondent.)

Appeal No. A-109-90

FINAL ORDER

21 TO: Michael G. Coder, Esq.
22 Attorney for Appellants
23 Coder, Tuel & Flanagan
24 8801 Folsom Boulevard
Suite 172
Sacramento, California 95826

25 Marilyn Schaff, Esq.
26 Bernard Lu, Esq.
27 Attorneys for Respondent
Legal Office
Department of Motor Vehicles
Post Office Box 932382
28 Sacramento, California 94232-3820

1 The above-entitled matter was heard by the Board during
2 its regularly scheduled meeting held on October 24, 1991 in Los
3 Angeles, California. After consideration of all evidence in the
4 administrative record, the oral and written arguments of counsel
5 for the parties, and the evidence adduced at the Board meeting
6 of October 24, 1991, the following determinations were made
7 pursuant to Vehicle Code sections 3053 and 3054:

- 8 1) The Department proceeded within its jurisdiction;
- 9 2) The Department proceeded in a manner consistent with
10 the law;
- 11 3) The Department's decision is supported by the
12 findings;
- 13 4) The findings are supported by the weight of the
14 evidence in the light of the whole record reviewed in its
15 entirety, including any and all relevant evidence adduced at any
16 hearing of the Board; and
- 17 5) The penalty, as provided in the decision of the
18 Department, is commensurate with the findings.

19 Accordingly, it is hereby ordered that the decision of the
20 Department is affirmed and the Final Order of the Department is
21 adopted as the Final Order of the New Motor Vehicle Board in
22 this matter.

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This decision shall become effective forthwith.

DATED: October 30, 1991

NEW MOTOR VEHICLE BOARD

By Robert J. Beckus
ROBERT J. BECKUS
Board Member

Frank S. Zolin, Director, DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

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NAVB

RECEIVED

JAN 22 1992

New Motor Vehicle Board

FILED DEPT. OF MOTOR VEHICLES JAN 17 1992 By <u>Aswell</u>
--

STATE OF CALIFORNIA

DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of

CMC OLDSMOBILE CADILLAC,
A Corporation, dba
CMC OLDSMOBILE CADILLAC, and
CERRITO MOTORCOACH LIMITED,

CASE NO. D-4000
OAH NO. N-34640

ORDER IMPLEMENTING
DECISION

Respondent.

Pursuant to the Final Order of the New Motor Vehicle Board, Appeal No. A-110-90, the decision of the Department of Motor Vehicles was affirmed and the Final Order of the Department was adopted as the Final Order of the New Motor Vehicle Board in this matter effective October 30, 1991.

The Decision in the above-entitled matter shall become effective upon filing as a public record. The revocation of Respondent's dealer's license and special plates no. D-20682 shall commence on that date.

DATED: JAN 6 1992

Frank S. Zolin
FRANK S. ZOLIN
Director

1 NEW MOTOR VEHICLE BOARD
2 1507 - 21st Street, Suite 330
3 Sacramento, California 95814
4 Telephone: (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Appeal of)
12 CMC OLDSMOBILE CADILLAC, dba)
13 CMC OLDSMOBILE CADILLAC and) Appeal No. A-110-90
14 CERRITO MOTORCOACH LIMITED,)
15 Appellants,)
16 vs.) FINAL ORDER
17 DEPARTMENT OF MOTOR VEHICLES,)
18 Respondent.)

19 TO: Michael G. Coder, Esq.
20 Attorney for Appellants
21 Coder, Tuel & Flanagan
22 8801 Folsom Boulevard
23 Suite 172
24 Sacramento, California 95826

25 Marilyn Schaff, Esq.
26 Bernard Lu, Esq.
27 Attorneys for Respondent
28 Legal Office
Department of Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

///

///

1 The above-entitled matter was heard by the Board during
2 its regularly scheduled meeting held on October 24, 1991 in Los
3 Angeles, California. After consideration of all evidence in the
4 administrative record, the oral and written arguments of counsel
5 for the parties, and the evidence adduced at the Board meeting
6 of October 24, 1991, the following determinations were made
7 pursuant to Vehicle Code sections 3053 and 3054:

- 8 1) The Department proceeded within its jurisdiction;
- 9 2) The Department proceeded in a manner consistent with
10 the law;
- 11 3) The Department's decision is supported by the
12 findings;
- 13 4) The findings are supported by the weight of the
14 evidence in the light of the whole record reviewed in its
15 entirety, including any and all relevant evidence adduced at any
16 hearing of the Board; and
- 17 5) The penalty, as provided in the decision of the
18 Department, is commensurate with the findings.

19 Accordingly, it is hereby ordered that the decision of the
20 Department is affirmed and the Final Order of the Department is
21 adopted as the Final Order of the New Motor Vehicle Board in
22 this matter.

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This decision shall become effective forthwith.

DATED: October 30, 1991

NEW MOTOR VEHICLE BOARD

By Robert J. Beckus
ROBERT J. BECKUS
Board Member

Frank S. Zolin, Director, DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

NMVB

RECEIVED
JAN 22 1992
New Motor Vehicle Board

FILED
DEPT. OF MOTOR VEHICLES
JAN 17 1992
By *C. Bowell*

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of
CERRITO CHEVROLET,
A Corporation,

CASE NO. D-3999
OAH NO. N-34639

ORDER IMPLEMENTING
DECISION

Respondent.

Pursuant to the Final Order of the New Motor Vehicle Board, Appeal No. A-111-90, the decision of the Department of Motor Vehicles was affirmed and the Final Order of the Department was adopted as the Final Order of the New Motor Vehicle Board in this matter effective October 30, 1991.

The Decision in the above-entitled matter shall become effective upon filing as a public record. The revocation of Respondent's dealer's license and special plates no. D-05628 shall commence on that date.

DATED: JAN 6 1992

Frank S. Zolin
FRANK S. ZOLIN
Director

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1 NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

10
11 In the Matter of the Appeal of)
12 CERRITO CHEVROLET,) Appeal No. A-111-90
13 Appellant,)
14 vs.) FINAL ORDER
15 DEPARTMENT OF MOTOR VEHICLES,)
16 Respondent.)
17

18 TO: Michael G. Coder, Esq.
19 Attorney for Appellant
20 Coder, Tuel & Flanagan
21 8801 Folsom Boulevard
Suite 172
Sacramento, California 95826

22 Marilyn Schaff, Esq.
23 Bernard Lu, Esq.
24 Attorneys for Respondent
25 Legal Office
Department of Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

26 ///

27 ///

28

1 The above-entitled matter was heard by the Board during
2 its regularly scheduled meeting held on October 24, 1991 in Los
3 Angeles, California. After consideration of all evidence in the
4 administrative record, the oral and written arguments of counsel
5 for the parties, and the evidence adduced at the Board meeting
6 of October 24, 1991, the following determinations were made
7 pursuant to Vehicle Code sections 3053 and 3054:

- 8 1) The Department proceeded within its jurisdiction;
- 9 2) The Department proceeded in a manner consistent with
10 the law;
- 11 3) The Department's decision is supported by the
12 findings;
- 13 4) The findings are supported by the weight of the
14 evidence in the light of the whole record reviewed in its
15 entirety, including any and all relevant evidence adduced at any
16 hearing of the Board; and
- 17 5) The penalty, as provided in the decision of the
18 Department, is commensurate with the findings.

19 Accordingly, it is hereby ordered that the decision of the
20 Department is affirmed and the Final Order of the Department is
21 adopted as the Final Order of the New Motor Vehicle Board in
22 this matter.

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This decision shall become effective forthwith.

DATED: October 30, 1991

NEW MOTOR VEHICLE BOARD

By Robert J. Beckus
ROBERT J. BECKUS
Board Member

Frank S. Zolin, Director, DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

1 NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Appeal of)
12 DANHO CORPORATION, dba)
ALMADEN HONDA,) Appeal No. A-112-90
13)
Appellant,)
14)
vs.) FINAL ORDER
15)
DEPARTMENT OF MOTOR VEHICLES,)
16)
Respondent.)
17)

18
19 TO: Michael G. Coder, Esq.
Attorney for Appellant
20 Coder, Tuel & Flanagan
8801 Folsom Boulevard
Suite 172
21 Sacramento, California 95826

22 Marilyn Schaff, Esq.
Bernard Lu, Esq.
23 Attorneys for Respondent
Legal Office
24 Department of Motor Vehicles
Post Office Box 932382
25 Sacramento, California 94232-3820

26 ///

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RECEIVED

JAN 22 1992

New Motor Vehicle Board

NMVB

FILED
DEPT. OF MOTOR VEHICLES
JAN 17 1992
By <u><i>Crowell</i></u>

STATE OF CALIFORNIA

DEPARTMENT OF MOTOR VEHICLES

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In the Matter of the Accusation of

DANHO CORPORATION,
A Corporation, dba
ALMADEN HONDA,

CASE NO. D-3998
OAH NO. N-34638

ORDER IMPLEMENTING
DECISION

Respondent.

Pursuant to the Final Order of the New Motor Vehicle Board, Appeal No. A-112-90, the decision of the Department of Motor Vehicles was affirmed and the Final Order of the Department was adopted as the Final Order of the New Motor Vehicle Board in this matter effective October 30, 1991.

The Decision in the above-entitled matter shall become effective upon filing as a public record. The revocation of Respondent's dealer's license and special plates no. D-20112 shall commence on that date.

DATED: JAN 6 1992

Frank S. Zolin
FRANK S. ZOLIN
Director

1 The above-entitled matter was heard by the Board during
2 its regularly scheduled meeting held on October 24, 1991 in Los
3 Angeles, California. After consideration of all evidence in the
4 administrative record, the oral and written arguments of counsel
5 for the parties, and the evidence adduced at the Board meeting
6 of October 24, 1991, the following determinations were made
7 pursuant to Vehicle Code sections 3053 and 3054:

- 8 1) The Department proceeded within its jurisdiction;
- 9 2) The Department proceeded in a manner consistent with
10 the law;
- 11 3) The Department's decision is supported by the
12 findings;
- 13 4) The findings are supported by the weight of the
14 evidence in the light of the whole record reviewed in its
15 entirety, including any and all relevant evidence adduced at any
16 hearing of the Board; and
- 17 5) The penalty, as provided in the decision of the
18 Department, is commensurate with the findings.

19 Accordingly, it is hereby ordered that the decision of the
20 Department is affirmed and the Final Order of the Department is
21 adopted as the Final Order of the New Motor Vehicle Board in
22 this matter.

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This decision shall become effective forthwith.

DATED: October 30, 1991

NEW MOTOR VEHICLE BOARD

By Robert J. Beckus
ROBERT J. BECKUS
Board Member

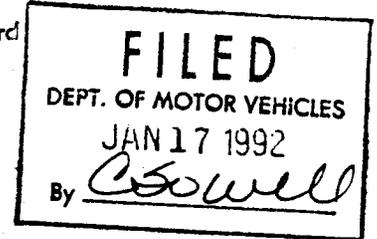
Frank S. Zolin, Director, DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

RECEIVED

JAN 2 1992

New Motor Vehicle Board

NMVB



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STATE OF CALIFORNIA

DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of

ALMADEN HYUNDAI,
A Corporation,

CASE NO. D-3997
OAH NO. N-34637

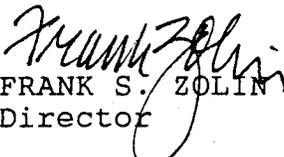
ORDER IMPLEMENTING
DECISION

Respondent.

Pursuant to the Final Order of the New Motor Vehicle Board, Appeal No. A-113-90, the decision of the Department of Motor Vehicles was affirmed and the Final Order of the Department was adopted as the Final Order of the New Motor Vehicle Board in this matter effective October 30, 1991.

The Decision in the above-entitled matter shall become effective upon filing as a public record. The revocation of Respondent's dealer's license and special plates no. D-18262 shall commence on that date.

DATED: JAN 6 1992


FRANK S. ZOLIN
Director

1 NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Appeal of)
12 ALMADEN HYUNDAI,)
13) Appellant,) Appeal No. A-113-90
14 vs.)
15 DEPARTMENT OF MOTOR VEHICLES,) FINAL ORDER
16 Respondent.)
17

18 TO: Michael G. Coder, Esq.
19 Attorney for Appellant
20 Coder, Tuel & Flanagan
21 8801 Folsom Boulevard
Suite 172
Sacramento, California 95826
22 Marilyn Schaff, Esq.
23 Bernard Lu, Esq.
24 Attorneys for Respondent
25 Legal Office
Department of Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

26 ///
27 ///

1 The above-entitled matter was heard by the Board during
2 its regularly scheduled meeting held on October 24, 1991 in Los
3 Angeles, California. After consideration of all evidence in the
4 administrative record, the oral and written arguments of counsel
5 for the parties, and the evidence adduced at the Board meeting
6 of October 24, 1991, the following determinations were made
7 pursuant to Vehicle Code sections 3053 and 3054:

- 8 1) The Department proceeded within its jurisdiction;
- 9 2) The Department proceeded in a manner consistent with
10 the law;
- 11 3) The Department's decision is supported by the
12 findings;
- 13 4) The findings are supported by the weight of the
14 evidence in the light of the whole record reviewed in its
15 entirety, including any and all relevant evidence adduced at any
16 hearing of the Board; and
- 17 5) The penalty, as provided in the decision of the
18 Department, is commensurate with the findings.

19 Accordingly, it is hereby ordered that the decision of the
20 Department is affirmed and the Final Order of the Department is
21 adopted as the Final Order of the New Motor Vehicle Board in
22 this matter.

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This decision shall become effective forthwith.

DATED: October 30, 1991

NEW MOTOR VEHICLE BOARD

By Robert J. Beckus
ROBERT J. BECKUS
Board Member

Frank S. Zolin, Director, DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

NMVB

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JAN 22 1992
New Motor Vehicle Board

FILED
DEPT. OF MOTOR VEHICLES
JAN 17 1992
By *Crowell*

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of
SAN JOSE NISSAN,
A Corporation,

CASE NO. D-3994
OAH NO. N-34675

ORDER IMPLEMENTING
DECISION

Respondent.

Pursuant to the Final Order of the New Motor Vehicle Board, Appeal No. A-114-90, the decision of the Department of Motor Vehicles was affirmed and the Final Order of the Department was adopted as the Final Order of the New Motor Vehicle Board in this matter effective October 30, 1991.

The Decision in the above-entitled matter shall become effective upon filing as a public record. The revocation of Respondent's dealer's license and special plates no. D-06189 shall commence on that date.

DATED: JAN 6 1992

Frank S. Zolin
FRANK S. ZOLIN
Director

1 NEW MOTOR VEHICLE BOARD
2 1507 - 21st Street, Suite 330
3 Sacramento, California 95814
4 Telephone: (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Appeal of)
12 SAN JOSE NISSAN,)
13 Appellant,) Appeal No. A-114-90
14 vs.)
15 DEPARTMENT OF MOTOR VEHICLES,) FINAL ORDER
16 Respondent.)
17

18 TO: Michael G. Coder, Esq.
19 Attorney for Appellant
20 Coder, Tuel & Flanagan
21 8801 Folsom Boulevard
Suite 172
Sacramento, California 95826

22 Marilyn Schaff, Esq.
23 Bernard Lu, Esq.
24 Attorneys for Respondent
25 Legal Office
Department of Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

26 ///

27 ///

28

1 The above-entitled matter was heard by the Board during
2 its regularly scheduled meeting held on October 24, 1991 in Los
3 Angeles, California. After consideration of all evidence in the
4 administrative record, the oral and written arguments of counsel
5 for the parties, and the evidence adduced at the Board meeting
6 of October 24, 1991, the following determinations were made
7 pursuant to Vehicle Code sections 3053 and 3054:

- 8 1) The Department proceeded within its jurisdiction;
- 9 2) The Department proceeded in a manner consistent with
10 the law;
- 11 3) The Department's decision is supported by the
12 findings;
- 13 4) The findings are supported by the weight of the
14 evidence in the light of the whole record reviewed in its
15 entirety, including any and all relevant evidence adduced at any
16 hearing of the Board; and
- 17 5) The penalty, as provided in the decision of the
18 Department, is commensurate with the findings.

19 Accordingly, it is hereby ordered that the decision of the
20 Department is affirmed and the Final Order of the Department is
21 adopted as the Final Order of the New Motor Vehicle Board in
22 this matter.

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This decision shall become effective forthwith.

DATED: October 30, 1991

NEW MOTOR VEHICLE BOARD

By Robert J. Beckus
ROBERT J. BECKUS
Board Member

Frank S. Zolin, Director, DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

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RECEIVED

JAN 22 1992

New Motor Vehicle Board

FILED
DEPT. OF MOTOR VEHICLES
JAN 17 1992
By *C. Powell*

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STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of
ALMADEN PONTIAC,
A Corporation, dba
ALMADEN DAIHATSU,

Respondent.

CASE NO. D-3996
OAH NO. N-34636

ORDER IMPLEMENTING
DECISION

Pursuant to the Final Order of the New Motor Vehicle Board, Appeal No. A-115-90, the decision of the Department of Motor Vehicles was affirmed and the Final Order of the Department was adopted as the Final Order of the New Motor Vehicle Board in this matter effective October 30, 1991.

The Decision in the above-entitled matter shall be effective upon filing as a public record. The revocation of Respondent's dealer's license and special plates no. D-2263 shall commence on that date.

DATED: JAN 6 1992

Frank S. Zolin
FRANK S. ZOLIN
Director

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NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)	
)	
ALMADEN PONTIAC, dba	)	Appeal No. A-115-90
ALMADEN DAIHATSU,)	
)	
Appellant,)	
)	
vs.	)	FINAL ORDER
)	
DEPARTMENT OF MOTOR VEHICLES,)	
)	
Respondent.)	
)	

TO: Michael G. Coder, Esq.
 Attorney for Appellant
 Coder, Tuel & Flanagan
 8801 Folsom Boulevard
 Suite 172
 Sacramento, California 95826

Marilyn Schaff, Esq.
 Bernard Lu, Esq.
 Attorneys for Respondent
 Legal Office
 Department of Motor Vehicles
 Post Office Box 932382
 Sacramento, California 94232-3820

///
///

1 The above-entitled matter was heard by the Board during
2 its regularly scheduled meeting held on October 24, 1991 in Los
3 Angeles, California. After consideration of all evidence in the
4 administrative record, the oral and written arguments of counsel
5 for the parties, and the evidence adduced at the Board meeting
6 of October 24, 1991, the following determinations were made
7 pursuant to Vehicle Code sections 3053 and 3054:

- 8 1) The Department proceeded within its jurisdiction;
- 9 2) The Department proceeded in a manner consistent with
10 the law;
- 11 3) The Department's decision is supported by the
12 findings;
- 13 4) The findings are supported by the weight of the
14 evidence in the light of the whole record reviewed in its
15 entirety, including any and all relevant evidence adduced at any
16 hearing of the Board; and
- 17 5) The penalty, as provided in the decision of the
18 Department, is commensurate with the findings.

19 Accordingly, it is hereby ordered that the decision of the
20 Department is affirmed and the Final Order of the Department is
21 adopted as the Final Order of the New Motor Vehicle Board in
22 this matter.

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This decision shall become effective forthwith.

DATED: October 30, 1991

NEW MOTOR VEHICLE BOARD

By Robert J. Beckus
ROBERT J. BECKUS
Board Member

Frank S. Zolin, Director, DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

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NMVB

RECEIVED
JAN 22 1992
New Motor Vehicle Board

FILED
DEPT. OF MOTOR VEHICLES
JAN 17 1992
By *Aswell*

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of

ALMADEN TOYOTA,
A Corporation,

CASE NO. D-3995
OAH NO. N-34635

ORDER IMPLEMENTING
DECISION

Respondent.

_____ /

Pursuant to the Final Order of the New Motor Vehicle Board, Appeal No. A-116-90, the decision of the Department of Motor Vehicles was affirmed and the Final Order of the Department was adopted as the Final Order of the New Motor Vehicle Board in this matter effective October 30, 1991.

The Decision in the above-entitled matter shall become effective upon filing as a public record. The revocation of Respondent's dealer's license and special plates no. D-03387 shall commence on that date.

DATED: JAN 6 1992

Frank S. Zolin
FRANK S. ZOLIN
Director

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NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
ALMADEN TOYOTA,)
Appellant,)
vs.)
DEPARTMENT OF MOTOR VEHICLES,)
Respondent.)

Appeal No. A-116-90
FINAL ORDER

TO: Michael G. Coder, Esq.
Attorney for Appellant
Coder, Tuel & Flanagan
8801 Folsom Boulevard
Suite 172
Sacramento, California 95826

Marilyn Schaff, Esq.
Bernard Lu, Esq.
Attorneys for Respondent
Legal Office
Department of Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

///
///

1 The above-entitled matter was heard by the Board during
2 its regularly scheduled meeting held on October 24, 1991 in Los
3 Angeles, California. After consideration of all evidence in the
4 administrative record, the oral and written arguments of counsel
5 for the parties, and the evidence adduced at the Board meeting
6 of October 24, 1991, the following determinations were made
7 pursuant to Vehicle Code sections 3053 and 3054:

- 8 1) The Department proceeded within its jurisdiction;
- 9 2) The Department proceeded in a manner consistent with
10 the law;
- 11 3) The Department's decision is supported by the
12 findings;
- 13 4) The findings are supported by the weight of the
14 evidence in the light of the whole record reviewed in its
15 entirety, including any and all relevant evidence adduced at any
16 hearing of the Board; and
- 17 5) The penalty, as provided in the decision of the
18 Department, is commensurate with the findings.

19 Accordingly, it is hereby ordered that the decision of the
20 Department is affirmed and the Final Order of the Department is
21 adopted as the Final Order of the New Motor Vehicle Board in
22 this matter.

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This decision shall become effective forthwith.

DATED: October 30, 1991

NEW MOTOR VEHICLE BOARD

By Robert J. Beckus
ROBERT J. BECKUS
Board Member

Frank S. Zolin, Director, DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

1 NEW MOTOR VEHICLE BOARD
2 1507 - 21st Street, Suite 330
3 Sacramento, California 95814
4 Telephone: (916) 445-1888
5
6
7

8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Appeal of)
12 MODESTO NISSAN,) Appeal No. A-117-90
13 Appellant,)
14 vs.) ORDER RE RESPONDENT'S
15 DEPARTMENT OF MOTOR VEHICLES,) MOTION FOR ORDER STAYING
16 Respondent.) PROCEEDINGS AND FOR AN
17) ORDER DISMISSING THE
18) APPEAL
19)
20)

21 TO: Cris C. Vaughan, Esq.
22 Attorney for Appellant
23 12268 Blue Ridge Court
24 Auburn, California 95603-8442

25 Marilyn Schaff, Esq., Chief Counsel
26 Robert H. Hargrove, III, Esq., Staff Counsel
27 Attorneys for Respondent
28 Department of Motor Vehicles
Legal Office
Post Office Box 932382
Sacramento, California 94232-3820

Based upon the Appearance and Documents filed in this matter by the Respondent, with no appearance made or response filed by the Appellant, the following orders are hereby made:

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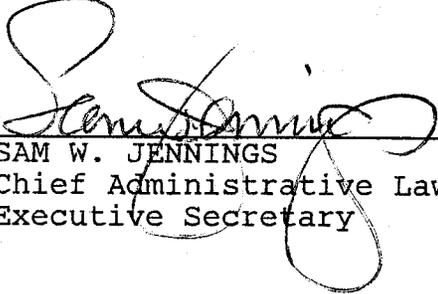
1. The Board order, dated June 19, 1990, staying this matter is hereby Dissolved; and

2. This matter is hereby remanded to the Respondent to complete its "cancellation" of Appellant's license.

SO ORDERED.

DATED: November 30, 1992

NEW MOTOR VEHICLE BOARD

By 
SAM W. JENNINGS
Chief Administrative Law Judge/
Executive Secretary

Frank Zolin, Director, DMV
Mario Balbiani, Program Manager
Occupational Licensing, DMV

1 NEW MOTOR VEHICLE BOARD
1507 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

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7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD

9
10 In the Matter of the Appeal of:)
11 FAIRVIEW FORD SALES, INC.,) APPEAL NO. A-118-90
12 Appellant,)
13 vs.) FINAL ORDER
14 DEPARTMENT OF MOTOR VEHICLES,)
15 Respondent.)

16
17 TO: John D. McGuire, Esq.
18 Attorney for Appellant
McGuire & Walker
19 1820 East 17th Street
P.O. Box 10237
20 Santa Ana, California 92711

21 Marilyn Schaff, Esq.
Assistant Chief Counsel
22 Robert H. Hargrove, III, Esq.
Staff Counsel
23 Attorneys for Respondent
Department of Motor Vehicles
24 Legal Office
P.O. Box 932382
25 Sacramento, California 94232-3820

26 / /

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28 / /

1 On September 21, 1990, the New Motor Vehicle Board met and
2 considered the above-entitled matter. After considering the
3 administrative record and the briefs and arguments of counsel
4 for the parties, it was determined by the Board that the
5 Findings of Fact of the Department of Motor Vehicles, as
6 contained in the Director's Decision dated February 28, 1990,
7 which pertain to violations of Title 13, California Code of
8 Regulations section 403.02(b), are not supported by the weight
9 of the evidence. Accordingly, the Director's Decision is
10 amended as follows:

11 A. Finding of Fact number 5 is deleted and the following
12 is substituted therefor:

13 5. Each of the vehicles listed as items number 2 through
14 10 of schedule A attached to the Accusation had been used
15 as a commercial rental vehicle before it was purchased by
Respondent.

16 There was insufficient clear and convincing evidence
17 presented to establish to a reasonable certainty that
Respondent had actual knowledge that the vehicles were
18 former rental vehicles.

19 B. Determination of Issues number 2 is deleted.

20 C. The Order of the Department is amended to provide for
21 a license suspension for a period of seven (7) days; provided,
22 however, that six (6) days of said suspension are stayed for a
23 period of two (2) years subject to the following terms and
conditions:

24 1. Respondent's license shall be suspended for one (1)
25 day.

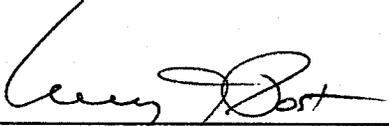
26 2. Respondent is subject to the terms and conditions as
27 set forth in paragraphs B through G, inclusive, of the
Director's Decision.

28

1 It was the consensus of the members of the Board that the
2 types of violations at issue in this matter are those for which
3 the individual salespersons involved should have been subject to
4 discipline.

5
6 DATED: 10-2-90

NEW MOTOR VEHICLE BOARD

7
8 BY 

MANNING J. POST
Vice-President
New Motor Vehicle Board

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26
27 A.A. Pierce, Director, DMV
John Lancara, Acting Program Manager
28 Occupational Licensing, DMV

1 NEW MOTOR VEHICLE BOARD
1507 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

3
4
5
6
7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD

9
10 In the Matter of the Appeal of:)
11 FAIRWAY LINCOLN-MERCURY, INC., dba) APPEAL NO. A-119-90
FAIRWAY LINCOLN-MERCURY,)
12)
Appellant,)
13) FINAL ORDER
vs.)
14)
DEPARTMENT OF MOTOR VEHICLES,)
15)
Respondent.)
16)

17
18 TO: John D. McGuire, Esq.
Attorney for Appellant
19 McGuire & Walker
1820 East 17th Street
20 P.O. Box 10237
Santa Ana, California 92711
21
Marilyn Schaff, Esq.
22 Assistant Chief Counsel
Robert H. Hargrove, III, Esq.
23 Staff Counsel
Attorneys for Respondent
24 Department of Motor Vehicles
Legal Office
25 P.O. Box 932382
Sacramento, California 94232-3820

26 / /
27 / /

1 On September 21, 1990, the New Motor Vehicle Board met and
2 considered the above-entitled matter. After considering the
3 administrative record and the briefs and arguments of counsel
4 for the parties, it was determined by the Board that the
5 Findings of Fact of the Department of Motor Vehicles, as
6 contained in the Director's Decision dated February 28, 1990,
7 which pertain to violations of Title 13, California Code of
8 Regulations section 403.02(b), are not supported by the weight
9 of the evidence. Accordingly, the Director's Decision is
10 amended as follows:

11 A. Finding of Fact number 5 is deleted and the following
12 is substituted therefor:

13 5. Each of the vehicles listed as items number 2 through
14 7, 10, 12 and 13 of schedule A attached to the Accusation
15 had been used as a commercial rental vehicle before it was
purchased by Respondent.

16 There was insufficient clear and convincing evidence
17 presented to establish to a reasonable certainty that
Respondent had actual knowledge that the vehicles were
18 former rental vehicles.

19 B. Determination of Issues number 2 is deleted.

20 C. The Order of the Department is amended to provide for
21 a license suspension for a period of seven (7) days; provided,
22 however, that six (6) days of said suspension are stayed for a
23 period of two (2) years subject to the following terms and
24 conditions:

25 1. Respondent's license shall be suspended for one (1)
26 day.

27 2. Respondent is subject to the terms and conditions as
28 set forth in paragraphs B through G, inclusive, of the
Director's Decision.

1 It was the consensus of the members of the Board that the
2 types of violations at issue in this matter are those for which
3 the individual salespersons involved should have been subject to
4 discipline.

5
6 DATED: 10.2.90

NEW MOTOR VEHICLE BOARD

7
8 By 

MANNING J. POST
Vice-President
New Motor Vehicle Board

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27 A.A. Pierce, Director, DMV
John Lancara, Acting Program Manager
28 Occupational Licensing, DMV

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2 Sacramento, California 95814
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CERTIFIED MAIL

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6 STATE OF CALIFORNIA
7 NEW MOTOR VEHICLE BOARD
8

9
10 In the Matter of the Appeal of:)
11 FAIRWAY TOYOTA, INC., dba) APPEAL NO. A-120-90
12 FAIRWAY TOYOTA,)
13 Appellant,)
14 vs.) FINAL ORDER
15 DEPARTMENT OF MOTOR VEHICLES,)
16 Respondent.)

17
18 TO: John D. McGuire, Esq.
Attorney for Appellant
19 McGuire & Walker
1820 East 17th Street
20 P.O. Box 10237
Santa Ana, California 92711
21
22 Marilyn Schaff, Esq.
Assistant Chief Counsel
23 Robert H. Hargrove, III, Esq.
Staff Counsel
24 Attorneys for Respondent
Department of Motor Vehicles
Legal Office
25 P.O. Box 932382
Sacramento, California 94232-3820

26 //
27 //

1 On September 21, 1990, the New Motor Vehicle Board met and
2 considered the above-entitled matter. After considering the
3 administrative record and the briefs and arguments of counsel
4 for the parties, it was determined by the Board that the
5 Findings of Fact of the Department of Motor Vehicles, as
6 contained in the Director's Decision dated February 28, 1990,
7 which pertain to violations of Title 13, California Code of
8 Regulations section 403.02(b), are not supported by the weight
9 of the evidence. Accordingly, the Director's Decision is
10 amended as follows:

11 A. Finding of Fact number 5 is deleted and the following
12 is substituted therefor:

13 5. Each of the vehicles listed as items number 1 and 2
14 of schedule A attached to the Accusation had been used as
15 a commercial rental vehicle before it was purchased by
16 Respondent.

17 There was insufficient clear and convincing evidence
18 presented to establish to a reasonable certainty that
19 Respondent had actual knowledge that the vehicles were
20 former rental vehicles.

21 B. Determination of Issues number 2 is deleted.

22 C. The Order of the Department is amended to provide for
23 a license suspension for a period of seven (7) days; provided,
24 however, that six (6) days of said suspension are stayed for a
25 period of two (2) years subject to the following terms and
26 conditions:

27 1. Respondent's license shall be suspended for one (1)
28 day.

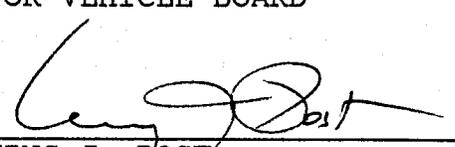
2. Respondent is subject to the terms and conditions as
set forth in paragraphs B through G, inclusive, of the
Director's Decision.

1 It was the consensus of the members of the Board that the
2 types of violations at issue in this matter are those for which
3 the individual salespersons involved should have been subject to
4 discipline.

5
6 DATED:

10-2-90

NEW MOTOR VEHICLE BOARD

7
8 By 

MANNING J. POST
Vice-President
New Motor Vehicle Board

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27 A.A. Pierce, Director, DMV
John Lancara, Acting Program Manager
28 Occupational Licensing, DMV

1 NEW MOTOR VEHICLE BOARD
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Telephone: (916) 445-1888

CERTIFIED MAIL

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7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD
9

10 In the Matter of the Appeal of:)
11 FAIRWAY MOTORS, INC., dba) APPEAL NO. A-121-90
12 FAIRWAY VOLKSWAGEN/FAIRWAY ISUZU)
13 Appellant,)
14 vs.) FINAL ORDER
15 DEPARTMENT OF MOTOR VEHICLES,)
16 Respondent.)
_____)

17
18 TO: John D. McGuire, Esq.
Attorney for Appellant
19 McGuire & Walker
1820 East 17th Street
20 P.O. Box 10237
Santa Ana, California 92711
21
Marilyn Schaff, Esq.
22 Assistant Chief Counsel
Robert H. Hargrove, III, Esq.
23 Staff Counsel
Attorneys for Respondent
24 Department of Motor Vehicles
Legal Office
25 P.O. Box 932382
Sacramento, California 94232-3820

26 //

27 //

28

1 On September 21, 1990, the New Motor Vehicle Board met and
2 considered the above-entitled matter. After considering the
3 administrative record and the briefs and arguments of counsel
4 for the parties, it was determined by the Board that the
5 Findings of Fact of the Department of Motor Vehicles, as
6 contained in the Director's Decision dated February 28, 1990,
7 which pertain to violations of Title 13, California Code of
8 Regulations section 403.02(b), are not supported by the weight
9 of the evidence. Accordingly, the Director's Decision is
10 amended as follows:

11 A. Finding of Fact number 5 is deleted and the following
12 is substituted therefor:

13 5. Each of the vehicles listed as items number 1 through
14 5, and 7 of schedule A attached to the Accusation had been
15 used as a commercial rental vehicle before it was
purchased by Respondent.

16 There was insufficient clear and convincing evidence
17 presented to establish to a reasonable certainty that
Respondent had actual knowledge that the vehicles were
18 former rental vehicles.

19 B. Determination of Issues number 2 is deleted.

20 C. The Order of the Department is amended to provide for
21 a license suspension for a period of seven (7) days; provided,
22 however, that six (6) days of said suspension are stayed for a
23 period of two (2) years subject to the following terms and
conditions:

24 1. Respondent's license shall be suspended for one (1)
25 day.

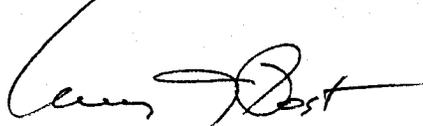
26 2. Respondent is subject to the terms and conditions as
27 set forth in paragraphs B through G, inclusive, of the
Director's Decision.
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It was the consensus of the members of the Board that the types of violations at issue in this matter are those for which the individual salespersons involved should have been subject to discipline.

DATED:
10-2-90

NEW MOTOR VEHICLE BOARD

By 
MANNING J. POST
Vice-President
New Motor Vehicle Board

A.A. Pierce, Director, DMV
John Lancara, Acting Program Manager
Occupational Licensing, DMV

1 NEW MOTOR VEHICLE BOARD
1507 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

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7 STATE OF CALIFORNIA

8 NEW MOTOR VEHICLE BOARD

9
10 In the Matter of the Appeal of:)

11 FAIRWAY FORD SALES, INC.,)
12 FAIRWAY FORD)

13 Appellant,)

14 vs.)

15 DEPARTMENT OF MOTOR VEHICLES,)

16 Respondent.)
_____)

APPEAL NO. A-122-90

FINAL ORDER

17
18 TO: John D. McGuire, Esq.
Attorney for Appellant
19 McGuire & Walker
1820 East 17th Street
20 P.O. Box 10237
Santa Ana, California 92711

21 Marilyn Schaff, Esq.
22 Assistant Chief Counsel
Robert H. Hargrove, III, Esq.
23 Staff Counsel
Attorneys for Respondent
24 Department of Motor Vehicles
Legal Office
25 P.O. Box 932382
Sacramento, California 94232-3820

26 / /

27 / /

28

1 On September 21, 1990, the New Motor Vehicle Board met and
2 considered the above-entitled matter. After considering the
3 administrative record and the briefs and arguments of counsel
4 for the parties, it was determined by the Board that the
5 Findings of Fact of the Department of Motor Vehicles, as
6 contained in the Director's Decision dated February 28, 1990,
7 which pertain to violations of Title 13, California Code of
8 Regulations section 403.02(b), are not supported by the weight
9 of the evidence. Accordingly, the Director's Decision is
10 amended as follows:

11 A. Finding of Fact number 5 is deleted and the following
12 is substituted therefor:

13 5. Each of the vehicles listed as items number 1, 3 and
14 4 of schedule A attached to the Accusation had been used
15 as a commercial rental vehicle before it was purchased by
Respondent.

16 There was insufficient clear and convincing evidence
17 presented to establish to a reasonable certainty that
Respondent had actual knowledge that the vehicles were
18 former rental vehicles.

19 B. Determination of Issues number 2 is deleted.

20 C. The Order of the Department is amended to provide for
21 a license suspension for a period of seven (7) days; provided,
22 however, that six (6) days of said suspension are stayed for a
23 period of two (2) years subject to the following terms and
24 conditions:

25 1. Respondent's license shall be suspended for one (1)
26 day.

27 2. Respondent is subject to the terms and conditions as
28 set forth in paragraphs B through G, inclusive, of the
Director's Decision.

1 It was the consensus of the members of the Board that the
2 types of violations at issue in this matter are those for which
3 the individual salespersons involved should have been subject to
4 discipline.

5
6 DATED: 10-2-90

NEW MOTOR VEHICLE BOARD

7
8 By 
9 MANNING J. POST
10 Vice-President
11 New Motor Vehicle Board
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27 A.A. Pierce, Director, DMV
28 John Lancara, Acting Program Manager
Occupational Licensing, DMV

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NEW MOTOR VEHICLE BOARD
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Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of:)	
)	
SMYTHE BUICK, INC., dba	)	APPEAL NO. A-123-90
SMYTHE BUICK-ISUZU-GMC TRUCK,)	
)	
Appellant,)	
	)	FINAL ORDER
vs.)	
)	
DEPARTMENT OF MOTOR VEHICLES)	
)	
Respondent.)	

TO: William B. Clayton, Esq.
Attorney for Appellant
Stone, Clayton & McEvoy
1475 South Bascom Avenue, Suite 111
Campbell, California 95008

Marilyn Schaff, Esq.
Assistant Chief Counsel
Bernard Lu, Esq.
Staff Counsel
Attorneys for Respondent
Department of Motor Vehicles
Legal Office
Post Office Box 932382
Sacramento, California 94232-3820

//
//

1 On September 21, 1990, the New Motor Vehicle Board met and
2 considered the above-entitled matter. After considering the
3 administrative record and the briefs and arguments of counsel
4 for the parties, it was determined by the Board that Findings of
5 Fact numbers IV, VI, and VIII of the Department of Motor
6 Vehicles, as contained in the Director's Decision dated March
7 22, 1990, are not supported by the weight of the evidence. As
8 such, the Director's Decision is amended to delete these
9 Findings of Fact. Furthermore, Determination of Issues numbers
10 I and II are deleted and the following is substituted therefor:

11
12 I
13 There was insufficient clear and convincing evidence
14 presented to establish to a reasonable certainty that cause
15 exists for discipline of Respondent's license.

16 The Director's Decision is further amended to delete the
17 Order contained therein and, in its place, substitute the
18 following:

19 ORDER

20 No discipline shall be imposed upon the license of
21 Respondent as a result of this matter.

22 DATED:

23 10-2-90

24 NEW MOTOR VEHICLE BOARD

25 By 

26 MANNING J. POST
27 Vice-President
28 New Motor Vehicle Board

29 A.A. Pierce, Director, DMV
30 John Lancara, Acting Program Manager
31 Occupational Licensing, DMV

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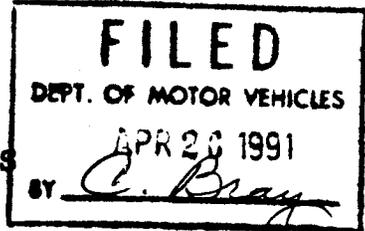
APR 30 1991

New Motor Vehicle Board



STATE OF CALIFORNIA

DEPARTMENT OF MOTOR VEHICLES



In the Matter of the Accusation of)
 HASSEN IMPORTS PARTNERSHIP,)
 A CALIFORNIA LIMITED PARTNERSHIP,)
 dba WEST COVINA MITSUBISHI/WEST)
 COVINA YUGO,)
 and)
 HASSEN IMPORTS, INC.)
 GENERAL PARTNER AND REAL PARTY IN)
 INTEREST,)
 Respondent.)

CASE NO. D-3740

ORDER MODIFYING ORDER
AFTER REMAND
NUNC PRO TUNC

Pursuant to the Stipulation of the parties, good cause appearing therefor, Subdivisions (a) and (b) of the ORDER AFTER REMAND are deleted and the following are substituted therefor:

(a) Dealer's license and special plates shall be suspended for thirty (30) days and during said periods Respondents shall not exercise any of the privileges granted under the license and special plates as follows:

(1) One period of five (5) consecutive days, from April 3 through April 7, 1991, and

(2) One period of twenty-five (25) consecutive days, from April 30 through May 24, 1991.

(b) The periods set forth in (a)(1) and (2), above, shall constitute the thirty (30) days during which Respondent's license shall be suspended pursuant to the ORDER AFTER REMAND, dated April 1, 1991.

DATED: APR 26 1991.

FRANK S. ZOLIN
 Director

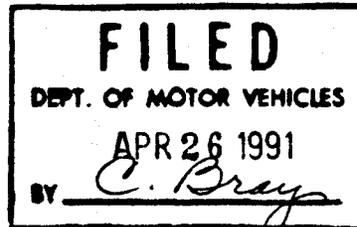
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APR 30 1991

DEPARTMENT OF MOTOR VEHICLES LEGAL OFFICE

New Motor Vehicle Board

91 APR 25 AM 9:45



1 OCHOA & SILLAS
HERMAN SILLAS
2 State Bar No.: 30281
Tokai Bank Building
3 Penthouse
530 West Sixth Street
4 Los Angeles, California 90014
Telephone: (213) 622-9170

5 Attorneys for Respondents
6 HASSEN IMPORTS PARTNERSHIP,
HASSEN IMPORTS, INC.

8 BEFORE THE
9 DEPARTMENT OF MOTOR VEHICLES
10 STATE OF CALIFORNIA

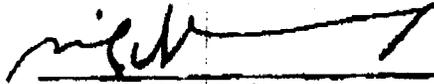
11 In the Matter of the Accusation of) Case No. D-3740
12 HASSEN IMPORTS PARTNERSHIP,)
13 A CALIFORNIA LIMITED PARTNERSHIP,) STIPULATION AND WAIVER
14 dba WEST COVINA MITSUBISHI/WEST) TO MODIFY ORDER AFTER
COVINA YUGO,) REMAND
and)
15 HASSEN IMPORTS, INC.)
16 GENERAL PARTNER AND REAL PARTY IN)
INTEREST,) Respondents.

17
18 RECITALS

19 The Department of Motor Vehicles, hereinafter referred to as
20 "DMV", and Hassen Imports, a limited partnership doing business as
21 West Covina Mitsubishi and West Covina Yugo, hereinafter referred to
22 as "Respondents," desire to modify the Order After Remand, dated
23 April 1, 1991, Sections (a) (1), (2), (3), and (b), to reflect the
24 thirty (30) day period during which the Dealer's license and special
25 plates shall be suspended. DMV and Respondents now enter into the
26 following Stipulation and Waiver.

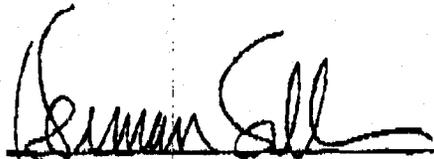
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DATED: APRIL 24, 1991



ZIAD ALHASSEN
President, Hassen Imports, Inc./
Hassen Imports Partnership

DATED: 4-24-91



HERMAN SILLAS
Attorney for Hassen Imports,
Inc./ Hassen Imports
Partnership

DATED: 4-25-91



DIANE K. BYRNES
Investigative Prosecutions
Unit Manager
Department of Motor Vehicles

DATED: 4-25-91



MADELINE D. RULE
Staff Counsel
Department of Motor Vehicles

(nod-s-w)

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NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
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Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)	
)	
HASSEN.IMPORTS PARTNERSHIP, dba	)	Appeal No. A-124-90
WEST COVINA MITSUBISHI/WEST COVINA)	
YUGO and HASSEN IMPORTS, INC.,)	
)	
Appellants,)	
)	
vs.	)	ORDER ADOPTING
	)	STIPULATED DECISION
DEPARTMENT OF MOTOR VEHICLES,)	
)	
Respondent.)	
)	

TO: Herman Sillas, Esq.
Attorney for Appellant
Ochoa & Sillas
Tokai Bank Building, Penthouse
530 West Sixth Street
Los Angeles, California 90014

Marilyn Schaff, Esq., Madeline Rule, Esq.
Attorneys for Respondent
Department of Motor Vehicles
Legal Office
Post Office Box 932382
Sacramento, California 94232-3820

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At its meeting of March 29, 1991 the New Motor Vehicle Board met and considered the Stipulated Decision in the above-referenced matter. After such consideration, the Board adopted the Stipulated Decision as its final order in this matter.

SO ORDERED.

DATED: March 29, 1991

NEW MOTOR VEHICLE BOARD

By John B. Vandenberg
JOHN B. VANDENBERG
President
New Motor Vehicle Board

Hon. Douglas H. Drake

Frank Zolin, Director, DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

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MAR 25 1991

New Motor Vehicle Board

FILED

New Motor Vehicle Board

Date 3-25-91

By TWS

BEFORE THE
NEW MOTOR VEHICLE BOARD

STATE OF CALIFORNIA

In the Matter of the Accusation of:)

A-124-90

HASSEN IMPORTS PARTNERSHIP,
A CALIFORNIA LIMITED PARTNERSHIP,
dba WEST COVINA MITSUBISHI/WEST
COVINA YUGO,

SETTLEMENT AGREEMENT

and
HASSEN IMPORTS, INC.
GENERAL PARTNER AND REAL PARTY IN
INTEREST,

Appellants.

TO THE NEW MOTOR VEHICLE BOARD:

RECITALS

The Department of Motor Vehicles, hereinafter referred to as "DMV", adopted the findings issued by the Administrative Judge in the matter of accusation against Hassen Imports, a limited partnership doing business as West Covina Mitsubishi and West Covina Yugo, hereinafter referred to as "Dealer" Case No. D-3740. DMV ordered a revocation of Dealer's license No. D-22362 on March 2, 1990.

Dealer filed an appeal before the New Motor Vehicle Board, hereinafter referred to as "NMVB", Case No. A-124-90, disputing the basis for the findings of the Administrative Law Judge and the Order of Revocation issued by DMV. Both DMV and Dealer filed briefs with the NMVB.

///

///

1 (c) Stipulate that Respondent waives the right in the
2 entitled matter to a hearing before the New Motor Vehicle
3 Board, reconsideration, any and all appeals and any and all
4 rights which may be afforded pursuant to the Vehicle Code, the
5 Administrative Procedure Act or any other provision of law.

6 (d) Mutually release each other from any and all
7 claims, causes of action and/or accusations known as of the
8 date of this argeement.

9 (e) Stipulate that the following Order may be entered
10 by the New Motor Vehicle Board.

11 ORDER

12 The dealer's license and special plates No. D-22362,
13 heretofore issued to Dealer, HASSEN IMPORTS PARTNERSHIP, A
14 California Limited Partnership, dba WEST COVINA MITSUBISHI/WEST
15 COVINA YUGO, are hereby revoked; said revocation is stayed for
16 a period of thirty (30) months under the following terms and
17 conditions:

18 (a) Dealer's license and special plates shall be
19 suspended for thirty (30) days and during said period(s) Dealer
20 shall not exercise any of the privileges granted under the
21 license and special plates, as follows:

22 (1) Thirty consecutive days, commencing ten days after
23 the effective date of the Order, OR

24 (2) Two periods of fifteen consecutive days each, with
25 the first period commencing ten days after the effective date
26 of the Order and the second period commencing sixty days after
27 the effective date of the Order, OR

1 (3) Six periods of five consecutive days each, as
2 follows:

- 3 . April 3, 4, 5, 6 and 7, 1991,
- 4 . May 6, 7, 8, 9 and 10, 1991,
- 5 . June 5, 6, 7, 8 and 9, 1991,
- 6 . July 3, 4, 5, 6 and 7, 1991,
- 7 . August 5, 6, 7, 8 and 9, 1991, and
- 8 . September 3, 4, 5, 6 and 7, 1991.

9 (b) Dealer shall advise DMV in writing, within five
10 days after the effective date of the Order in this matter,
11 which of the options in (a), above, it desires to exercise. If
12 dealer fails to advise DMV which option it desires, option (1)
13 shall be imposed by DMV.

14 (c) Dealer further agrees that if, in connection with
15 any advertising, representation, or dissemination made to the
16 public or any member thereof during the period(s) of actual
17 suspension, such advertising, representation, or dissemination
18 states or reasonably implies that Dealer's license has been or
19 is suspended for any reason other than by order of the
20 Department, such advertising, representation, or dissemination
21 shall be deemed to be untrue or misleading advertising within
22 the meaning of the Vehicle Code Section 11713(a) and shall also
23 be deemed a violation of the conditions of probation as agreed
24 herein.

25 (d) During the period(s) of actual license suspension,
26 Department employees shall post notices of suspension, in
27 accordance with the provisions of Section 421.00 of Title 13 of
28

1 the California Code of Regulations. Removal of these notices
2 prior to the termination of suspension shall be deemed a
3 violation of the conditions of probation.

4 (e) Dealer shall obey all the laws of the United
5 States, the State of California, or its subdivisions, and the
6 rules and regulations of the Department of Motor Vehicles now
7 or hereafter in effect. If any of Dealer's partners, officers,
8 directors or stockholders, if such stockholders are active in
9 the management, direction or control of Dealer's licensed
10 activity, are convicted of a felony or a crime involving moral
11 turpitude, including a conviction after a plea of not guilty or
12 nolo contendere, such conviction shall be considered a
13 violation of the terms and conditions of any probationary
14 license issued to Dealer.

15 (f) Any license issued to Dealer during a period of
16 thirty (30) months shall be issued as a probationary license
17 and then only if it is determined that Dealer has fully
18 complied with the terms and conditions hereof and that no cause
19 for refusal to issue, suspend or revoke has intervened or
20 exists.

21 (g) Should the Director of Motor Vehicles at any time
22 during the existence of said probationary license, or the
23 renewal thereof, determine upon satisfactory evidence that the
24 Dealer has violated any of the terms and conditions under which
25 said license was issued, the Director may, after notice and
26 hearing, vacate the stay order and reimpose the stayed portion

27 ///

1 of the penalty; and if no such determination is made, the stay
2 shall become permanent.

3 If an Accusation is filed against Dealer during the
4 probationary period, the Director shall have continuing
5 jurisdiction over this matter until the Accusation is resolved
6 and the period of this probation shall be extended until such
7 resolution.

8 (h) Dealer shall permit free and ready access to
9 business records pertaining to the purchase, sale, rental or
10 leasing of vehicles at the request of a departmental
11 investigator during normal business hours and without prior
12 notice.

13 (i) During the period(s) of suspension, Dealer shall
14 pay all dealership employees their salary, wages and benefits
15 at a rate not less than that paid such employees on April 1,
16 1991. Dealer shall not circumvent the effect of this provision
17 by terminating employees or reducing the work hours of
18 employees subsequent to April 1, 1991.

19 (j) Throughout the period specified in (f), above,
20 Tarek Alhassen shall not participate in the management,
21 direction or control, nor be employed in the course of Dealer's
22 licensed activity; provided, however, that Tarek Alhassen shall
23 not be required to divest himself of his stock holdings in the
24 dealership under the terms of this paragraph.

25 (k) Dealer shall pay restitution to those customers who
26 testified against Dealer in the proceedings held before the
27 Administrative Law Judge as a result of the Accusation in this
28

1 matter. Restitution shall be limited to the amounts customers
2 were overcharged, as determined by DMV, and which have not
3 already been reimbursed by Dealer, as set forth in Attachment
4 A. Dealer shall provide to DMV evidence of this restitution
5 within thirty (30) days of the effective date of the Order.
6 Restitution may be conditioned by Dealer upon the customer
7 executing a full release of any and all claims against Dealer,
8 its employees, principals and agents, arising out of the facts
9 leading to the Accusation in this matter. Dealer shall not be
10 required to make restitution to Ralph Mayer, in light of the
11 fact that he has pending a civil action against Dealer seeking
12 damages.

13
14 DATED: MARCH 18, 1991



ZIAD ALHASSEN
President, Hassen Imports, Inc./
Hassen Imports Partner

15
16 DATED: 3-18-91



TAREK ALHASSEN

17
18 DATED: 3-18-91



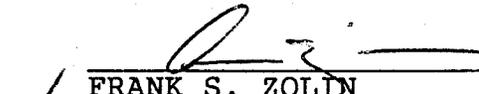
TARIF ALHASSEN

19
20 DATED: 3-18-91



HERMAN SILLAS
Attorney for Respondent

21
22 DATED: 3-18-91



FRANK S. ZOLIN
Director
Department of Motor Vehicles

23
24 DATED: 3-18-91



MADELINE D. RULE
Staff Counsel
Department of Motor Vehicles

RESTITUTION LIST

<u>CUSTOMER NAME</u>	<u>AMOUNT</u>
Adrian Lenyard	\$ 950
Guillermina Magana	600
Carmen Tomenis	307
Theresa Taillon Auman	75
Virginia Gil	313
Luis & Rosa Schettini	518
John Devine	336
Elpidio M. Lopez	410
Leif Blom	313
Samuel B. Johnson	313
Maurice Causly	108
Dee Miles	108
Elenor Ramirez	2,977*
Ella Touhey	<u>400</u>
TOTAL	\$7,728

*This amount shall be reduced to \$1,300 upon showing by Dealer that the subject vehicle was repossessed from Elenor Ramirez.

ATTACHMENT A

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NEW MOTOR VEHICLE BOARD
1507 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
SOUTH COUNTY CHRYSLER-)
PLYMOUTH-DODGE,)
Appellant,)
vs.)
DEPARTMENT OF MOTOR VEHICLES,)
Respondent.)
Appeal No. A-125-90
FINAL ORDER

TO: Harold C. Wright, Esq.
Robertson, Alexander, Luther,
Esselstein, Shiells & Wright
750 Menlo Avenue, Suite 250
Menlo Park, California 94025

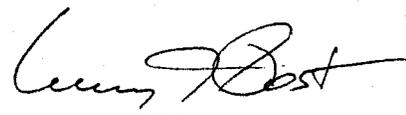
Marilyn Schaff, Esq., Acting Chief Counsel
Bernard Lu, Staff Counsel
Department of Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

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1 On October 26, 1990, the New Motor Vehicle Board met and
2 considered the above-entitled matter. After considering the
3 administrative record and the briefs and arguments of counsel
4 for the parties, it is hereby ordered that the decision of the
5 Director of the Department of Motor Vehicles, dated May 29,
6 1990, is reversed and all discipline imposed pursuant to that
7 decision is vacated.

8
9 DATED: October 26, 1990

NEW MOTOR VEHICLE BOARD

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11 By 
12 MANNING J. POST
13 Vice-President

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26 A. A. Pierce, Director DMV
27 Frank Ketchel, Acting Program Manager
28 Occupational Licensing, DMV
Legal Office DMV

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NMVB

RECEIVED
JAN 22 1992
New Motor Vehicle Board

FILED
DEPT. OF MOTOR VEHICLES
JAN 17 1992
By *Cowell*

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of
ALMADEN TOYOTA,
A Corporation,

Respondent.

CASE NO. D-4182
OAH NO. N-36407

ORDER IMPLEMENTING
DECISION

Pursuant to the Final Order of the New Motor Vehicle Board, Appeal No. A-126-90, the decision of the Department of Motor Vehicles was affirmed and the Final Order of the Department and was adopted as the Final Order of the New Motor Vehicle Board in this matter effective October 30, 1991.

The Decision in the above-entitled matter shall become effective upon filing as a public record. The revocation of Respondent's dealer's license and special plates no. D-03387 shall commence on that date.

DATED: JAN 6 1992

Frank S. Zolin
FRANK S. ZOLIN
Director

1 NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

10
11 In the Matter of the Appeal of)
12 ALMADEN TOYOTA,)
13) Appellant,)
14 vs.)
15 DEPARTMENT OF MOTOR VEHICLES,)
16 Respondent.)
17)

Appeal No. A-126-90

FINAL ORDER

18 TO: Michael G. Coder, Esq.
19 Attorney for Appellant
20 Coder, Tuel & Flanagan
21 8801 Folsom Boulevard
Suite 172
Sacramento, California 95826

22 Marilyn Schaff, Esq.
23 Bernard Lu, Esq.
24 Attorneys for Respondent
25 Legal Office
Department of Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

26 ///

27 ///

28

1 The above-entitled matter was heard by the Board during
2 its regularly scheduled meeting held on October 24, 1991 in Los
3 Angeles, California. After consideration of all evidence in the
4 administrative record, the oral and written arguments of counsel
5 for the parties, and the evidence adduced at the Board meeting
6 of October 24, 1991, the following determinations were made
7 pursuant to Vehicle Code sections 3053 and 3054:

- 8 1) The Department proceeded within its jurisdiction;
- 9 2) The Department proceeded in a manner consistent with
10 the law;
- 11 3) The Department's decision is supported by the
12 findings;
- 13 4) The findings are supported by the weight of the
14 evidence in the light of the whole record reviewed in its
15 entirety, including any and all relevant evidence adduced at any
16 hearing of the Board; and
- 17 5) The penalty, as provided in the decision of the
18 Department, is commensurate with the findings.

19 Accordingly, it is hereby ordered that the decision of the
20 Department is affirmed and the Final Order of the Department is
21 adopted as the Final Order of the New Motor Vehicle Board in
22 this matter.

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This decision shall become effective forthwith.

DATED: October 30, 1991

NEW MOTOR VEHICLE BOARD

By Robert J. Beckus
ROBERT J. BECKUS
Board Member

Frank S. Zolin, Director, DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

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NMVB

RECEIVED
JAN 22 1992
New Motor Vehicle Board

FILED
DEPT. OF MOTOR VEHICLES
JAN 17 1992
By *Aboull*

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of
CERRITO CHEVROLET OLDSMOBILE GEO,
A Corporation, formerly known as
CERRITO CHEVROLET,

Respondent.

CASE NO. D-4181
OAH NO. N-36406

ORDER IMPLEMENTING
DECISION

Pursuant to the Final Order of the New Motor Vehicle Board, Appeal No. A-127-90, the decision of the Department of Motor Vehicles was affirmed and the Final Order of the Department was adopted as the Final Order of the New Motor Vehicle Board in this matter effective October 30, 1991.

The Decision in the above-entitled matter shall become effective upon filing as a public record. The revocation of Respondent's dealer's license and special plates no. D-05628 shall commence on that date.

DATED: JAN 6 1992

Frank S. Zolin
FRANK S. ZOLIN
Director

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NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)	
)	
CERRITO CHEVROLET OLDSMOBILE GEO,	)	Appeal No. A-127-90
formerly known as CERRITO CHEVROLET)	
and ALMADEN TOYOTA,)	
)	
Appellant,)	
)	
vs.	)	FINAL ORDER
)	
DEPARTMENT OF MOTOR VEHICLES,)	
)	
Respondent.)	
)	

TO: Michael G. Coder, Esq.
Attorney for Appellant
Coder, Tuel & Flanagan
8801 Folsom Boulevard, Suite 172
Sacramento, California 95814

Marilyn Schaff, Esq., Bernard Lu, Esq.
Attorneys for Respondent
Legal Office
Department of Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

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1 The above-entitled matter was heard by the Board during
2 its regularly scheduled meeting held on October 24, 1991 in Los
3 Angeles, California. After consideration of all evidence in the
4 administrative record, the oral and written arguments of counsel
5 for the parties, and the evidence adduced at the Board meeting
6 of October 24, 1991, the following determinations were made
7 pursuant to Vehicle Code sections 3053 and 3054:

- 8 1) The Department proceeded within its jurisdiction;
- 9 2) The Department proceeded in a manner consistent with
10 the law;
- 11 3) The Department's decision is supported by the
12 findings;
- 13 4) The findings are supported by the weight of the
14 evidence in the light of the whole record reviewed in its
15 entirety, including any and all relevant evidence adduced at any
16 hearing of the Board; and
- 17 5) The penalty, as provided in the decision of the
18 Department, is commensurate with the findings.

19 Accordingly, it is hereby ordered that the decision of the
20 Department is affirmed and the Final Order of the Department is
21 adopted as the Final Order of the New Motor Vehicle Board in
22 this matter.

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This decision shall become effective forthwith.

DATED: October 30, 1991

NEW MOTOR VEHICLE BOARD

By Robert J. Beckus
ROBERT J. BECKUS
Board Member

Frank S. Zolin, Director, DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office, DMV

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NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)	
)	
CAMPUS CHEVROLET TOYOTA, INC.,	)	Appeal No. A-128-91
and CAMPUS IMPORTS,)	
)	
Appellant,)	
)	
vs.	)	ORDER OF DISMISSAL
)	
DEPARTMENT OF MOTOR VEHICLES,)	
)	
Respondent.)	

TO: John A. Dougherty, Esq.
Attorney for Appellant
Grossfeld, Dougherty & Grossfeld
3201 Florin-Perkins Road, Third Floor
Post Office Box 276005
Sacramento, California 95826-6005

Marilyn Schaff, Esq., Bernard Lu, Esq.
Attorneys for Respondent
Legal Office
Department of Motor Vehicles
Post Office Box 932382
Sacramento, California 94232-3820

PURSUANT TO APPELLANT'S request for dismissal, the

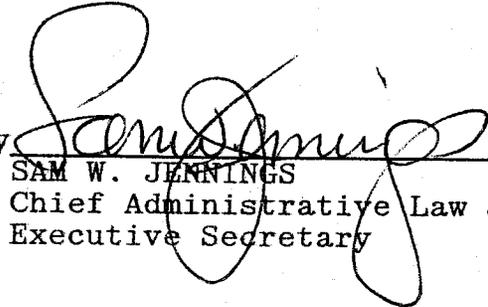
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1 above-entitled appeal is hereby dismissed. There will be no
2 further proceedings in this cause before the New Motor Vehicle
3 Board.

4 SO ORDERED.

5
6 DATED: August 16, 1991

NEW MOTOR VEHICLE BOARD

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9 By 
10 SAM W. JENNINGS
11 Chief Administrative Law Judge/
12 Executive Secretary

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26 Frank S. Zolin, Director, DMV
27 Frank Ketchel, Acting Program Manager
28 Occupational Licensing, DMV
Legal Office, DMV

1 NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA

9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Appeal of)
12 FULLER FORD, a Corporation,)
dba FULLER FORD,)
13)
Appellant,)
14)
vs.)
15)
STATE OF CALIFORNIA,)
16 DEPARTMENT OF MOTOR VEHICLES,)
17 Respondent.)
18

Appeal No. A-129-91

DECISION

19 TO: George John Murphy, Esq.
Attorney for Appellant
20 Law Offices of George John Murphy
4180 La Jolla Village Drive
21 La Jolla, California 92037

22 Marilyn Schaff, Esq., Chief Counsel
Attorney for Respondent
23 Department of Motor Vehicles
Legal Office
24 Post Office Box 932382
Sacramento, California 94232-3820
25

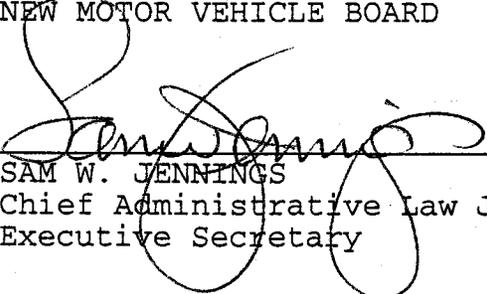
26 Pursuant to Stipulation of counsel for the parties, this matter
27 is remanded to the Department of Motor Vehicles.

28 ///

1 This Decision shall become effective forthwith.

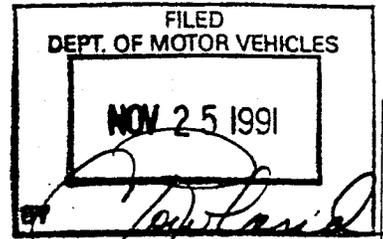
2 **IT IS SO ORDERED THIS 20th day of July 1994**

3 NEW MOTOR VEHICLE BOARD

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5 BY  _____
6 SAM W. JENNINGS
7 Chief Administrative Law Judge/
8 Executive Secretary

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27 Frank Zolin, Director, DMV
28 Mario Balbiani, Program Manager
Occupational Licensing, DMV

ORIGINAL



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STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of

FULLER FORD,
A Corporation, dba
FULLER FORD,

CASE NO. D-4162
OAH NO. L-51550

DECISION

Respondent.

WHEREAS, the PROPOSED DECISION in this matter was served upon the Respondent in accordance with Government Code Section 11517(b); and

WHEREAS, the Respondent was notified by a NOTICE CONCERNING PROPOSED DECISION that the Department considered, but did not adopt the PROPOSED DECISION; and

WHEREAS, the Director of Motor Vehicles has considered the oral argument and the record, including the transcript, and now finds that:

GOOD CAUSE APPEARING THEREFOR, the PROPOSED DECISION of the Administrative Law Judge is hereby adopted as the DECISION in this matter except for FINDINGS OF FACT IV and VIII, and the ORDER, which are not adopted and the following are substituted therefor:

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1 FINDINGS OF FACT

2 IV

3 During the spring and summer of 1989, Johnny Hildreth
4 looked for a car. He visited nearly a dozen dealerships
5 between Escondido and Chula Vista, California, and tested many
6 cars.

7 On August 20, 1989, Hildreth went to respondent's
8 dealership looking for a car or truck, new or used, and met a
9 salesman named Jack Latham. Hildreth told Latham he wanted a
10 car which got the same or better mileage than the Dodge Colt he
11 was then driving. Latham directed Hildreth to the Ford Festiva
12 referred to in Finding III. The car was located on the new car
13 side of the dealership and was surrounded by other cars which
14 appeared to Hildreth to be new. The manufacturer's new car
15 sticker and the dealer's new car sticker were on the Ford.
16 There were 111 miles on the odometer. Hildreth discussed with
17 Latham each of the features listed on the manufacturer's
18 sticker and expressed an interest in purchasing the car.
19 Hildreth testified Latham told him the car was new. Hildreth
20 did not test drive the car and said he would have to check out
21 a few things before he bought the car.

22 Hildreth returned to respondent's dealership on August
23 22, 1989, met Latham, and told him he wanted to purchase the
24 car. They negotiated a price for the Ford and also a price for
25 the trade-in of Hildreth's Dodge Colt. They agreed on a price
26 of \$8,099.00 plus \$995.00 for the Ford, and respondent gave
27 Hildreth \$500.00 as the trade-in value for the Dodge. Hildreth
28 also received a manufacturer's new car rebate in the amount of
\$600.00 from Ford. Hildreth applied the \$500.00 from the
trade-in of the Dodge, the \$600.00 rebate, and an additional
\$500.00 to make the down payment. The remainder of the
purchase price of the car was financed through Far Western
Bank. The financing arrangement was based upon the belief by
the lender that the car was a new car. Respondent then
prepared the necessary paperwork.

29 One of the documents Hildreth signed was the Contract
30 and Security Agreement. This document indicated the Ford
31 Festiva was new. Another document he signed was a Report of
32 Sale Used Vehicle, which is a document prepared for and
33 submitted to the Department. Hildreth then gave Latham a check
34 for part of the remaining \$500.00 for the down payment, and a
35 friend of Hildreth's wrote a check for the difference. He
36 drove the car that night.

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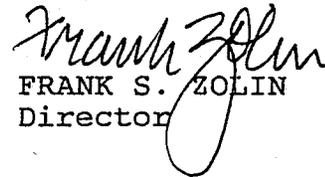
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5. Respondent shall permit free and ready access to business records pertaining to the purchase, sale, rental or leasing of vehicles at the request of a departmental investigator during normal business hours and without prior notice.

This DECISION shall become effective JAN 6 - 1992.

DATED: NOV 21 1991.


FRANK S. ZOLIN
Director

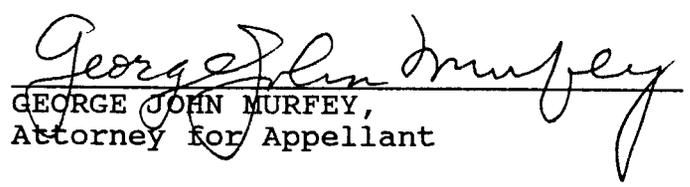
1 including the Order, shall become null and void in the event that
2 the New Motor Vehicle Board decides not to remand the matter back
3 to the Department. In the event the underlying Stipulation and
4 Waiver in Case No. D-4162 is not adopted by the Director of the
5 Department, this Stipulation shall also be considered null and
6 void, and notwithstanding the provisions of Vehicle Code Section
7 3050 et seq., or any other provision of law, respondent shall be
8 entitled to pursue its filed Appeal No. A-129-91 pending before the
9 New Motor Vehicle Board as if this Stipulation had not been
10 executed.

11
12 DATED: 4/26/94



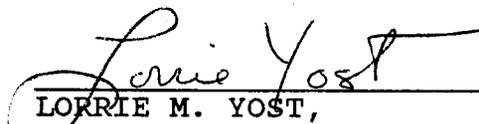
DOUGLAS FULLER
President of Appellant, Fuller Ford

14
15 DATED: 4/28/94



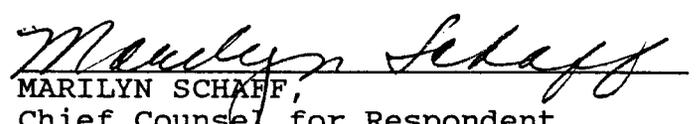
GEORGE JOHN MURFEY,
Attorney for Appellant

17
18 DATED: 5-1-94



LORRIE M. YOST,
Staff Counsel for Respondent
Department of Motor Vehicles

20
21 DATED: 5/17/94



MARILYN SCHAFF,
Chief Counsel for Respondent
Department of Motor Vehicles

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27 STIPFULR\FULLER

1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
) **Appeal No. A-130-92**
PATCHETTS MOTORS, INC., dba)
PATCHETTS FORD MERCURY,)
)
Appellant,)
)
vs.)
)
DEPARTMENT OF MOTOR VEHICLES,)
)
Respondent.)
)
)
)

DECISION

The attached Stipulation is hereby adopted by the New Motor Vehicle Board as its Decision in the above entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 2/ day of March 1995.



MANNING J. POST
President
New Motor Vehicle Board

NMVB

FILED
DEPT. OF MOTOR VEHICLES
APR 16 1993
BY C.M. LUJAN

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STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

RECEIVED
APR 19 1993
New Motor Vehicle Board

In the Matter of the Accusation of
PATCHETTS, MOTORS, INC.,
A Corporation, dba
PATCHETTS FORD MERCURY,

CASE NO. D-4560

DECISION

Respondent.

The Stipulation and Waiver entered into between the Department of Motor Vehicles and the respondent herein, a copy of which is herewith served upon you and which has heretofore been filed as a public record, is hereby adopted by the Director of Motor Vehicles of the State of California as the Decision in the above matter.

This DECISION shall become effective APR 16 1993.

DATED: APR 15 1993.

Frank S. Zolin
FRANK S. ZOLIN
Director

FILED
 DEPT. OF MOTOR VEHICLES
 APR 16 1993
 BY C.M. Lujan

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STATE OF CALIFORNIA
 DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Accusation of

PATCHETTS MOTORS, INC., A
 CORPORATION, DBA PATCHETTS
 FORD/MERCURY

CASE NO. D-4560
 OAH NO. N-400007

STIPULATION AND WAIVER

Respondent.

The Department of Motor Vehicles (hereinafter the Department) and the Respondent do hereby:

(a) Stipulate that the Decision in this matter filed September 11, 1992 shall be effective, with the exception of the Order, which shall be replaced with the following Order entered by the Director of Motor Vehicles. The parties further agree to begin implementation of the Order pending approval of the remand of this case back from the New Motor Vehicle Board, but that the Order shall become null and void in the event that the New Motor Vehicle Board decides not to remand the matter back to the Department, or the Director of Motor Vehicles decides not to adopt the Stipulation and Waiver. The effective date of the Order shall be when it is executed by the Director of Motor Vehicles.

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1 (b) Stipulate that Respondent waives the right,
2 following remand of this case from the New Motor Vehicle Board,
3 and adoption of this Stipulation and Waiver by the Director of
4 Motor Vehicles, to a hearing, reconsideration, any and all
5 appeals and any and all rights which may be afforded pursuant
6 to the Vehicle Code, the Administrative Procedure Act or any
7 other provision of law. In the event this Stipulation and
8 Waiver is not adopted by the Director of Motor Vehicles, any
9 consideration paid by Respondent to the Department pursuant to
10 this Stipulation and Waiver shall be returned to Respondent.

11 ORDER

12 The dealer's license and special plates no. D-00334,
13 heretofore issued to Respondent, PATCHETTS MOTORS, INC., A
14 Corporation, dba PATCHETTS FORD MERCURY, are hereby suspended
15 for a period of twenty (20) days; provided however, that
16 thirteen (13) days of said suspension are stayed for a period
17 of two (2) years under the following terms and conditions:

18 (1) Respondent's license and special plates shall be
19 suspended for a period of seven (7) days from the
20 effective date of the Order and during said period
21 Respondent shall not exercise any of the privileges
22 granted under the license and special plates.
23 Respondent is hereby granted the option to make a
24 monetary payment in lieu of up to six (6) days of the
25 suspension, which payment shall be \$6,000 per day.
26 Respondent hereby elects to avoid six (6) days of the
27 suspension by making a total payment of \$36,000. Said
28 payments shall be made payable to:

Department of Motor Vehicles
Accounting Section-F109
P. O. Box 932382
Sacramento, CA 94232-3820

pursuant to the following schedule:

///

///

1 \$8,000 no later than April 8, 1993.
2 \$3,500 no later than May 5, 1993.
3 \$3,500 no later than June 5, 1993.
4 \$3,500 no later than July 5, 1993.
5 \$3,500 no later than August 5, 1993.
6 \$3,500 no later than September 5, 1993.
7 \$3,500 no later than October 5, 1993.
8 \$3,500 no later than November 5, 1993.
9 final \$3,500 no later than December 5, 1993.

6 (2) The actual license suspension for one (1) day shall
7 commence on April 28, 1993.

8 (3) Respondent further agrees that if, in connection
9 with any advertising, representation, or dissemination
10 made to the public or any member thereof during the
11 period of actual suspension, such advertising,
12 representation, or dissemination states or reasonable
13 implies that Respondent's dealer's license has or is
14 suspended for any reason other than by order of the
15 Department, such advertising, representation, or
16 dissemination shall be deemed to be untrue or
17 misleading advertising within the meaning of Vehicle
18 Code Section 11713(a) and shall also be deemed a
19 violation of the conditions of probation as agreed
20 herein.

15 (4) During the period of actual license suspension,
16 Department employees may post notices of suspension, in
17 accordance with the provisions of Section 421.00 of
18 Title 13 of the California Code of Regulations.
19 Removal of these notices prior to the termination of
20 suspension shall be deemed a violation of the
21 conditions of probation.

19 (5) Respondent shall obey all the laws of the United
20 States, the State of California, or its subdivisions,
21 and the rules and regulations of the Department of
22 Motor Vehicles now or hereafter in effect. If any of
23 Respondent's officers, directors or stockholders, if
24 such stockholders are active in the management,
25 direction or control of Respondent's licensed activity,
26 are convicted of a felony or a crime substantially
27 related to the qualifications, functions or duties of
28 the licensed activity, such conviction shall be
29 considered a violation of the terms and conditions of
30 any probationary license issued to Respondent.

25 (6) Any license issued to Respondent during a period of
26 two (2) years shall be issued as a probationary
27 license and then only if it is determined that
28 Respondent has fully complied with the terms and
29 conditions hereof and that no cause for refusal to
30 issue, suspend or revoke has intervened or exists.

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(7) Respondent shall permit free and ready access to business records pertaining to the purchase, sale, rental or leasing of vehicles at the request of a departmental investigator during normal business hours and without prior notice.

(8) Any failure to meet the terms and conditions of this Order, shall be deemed a violation of probation and the Department may, after notice and hearing, suspend or revoke Respondent's license and special plates. Upon full compliance with the Order the stay of the thirteen (13) days of suspension shall become permanent, and Respondent shall be restored to full privileges pertaining to the use of its dealer's license and special plates no. D-00334.

DATED: April 1, 1993

Ed. Garcia
EDWIN GARCIA,
President, Respondent

DATED: April 1, 1993

Jeremy C. Cook, Jr.
JEREMY C. COOK, JR.
Attorney at Law

DATED: 04-07-93

Diane K. Byrnes by Act
DIANE K. BYRNES,
Manager,
Division of Investigations
and Occupational Licensing

DATED: April 6, 1993

Bernard Lu
BERNARD LU,
Senior Staff Counsel
Department of Motor Vehicles

1 NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-2080

CERTIFIED MAIL

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7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD
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10 In the Matter of the Appeal of)
11 FORTY-NINER SIERRA RESOURCES, INC.,)
12 a California corporation doing)
13 business as FORTY-NINER SUBARU/)
ISUZU,)
14 Appellant,)
15 vs.)
16 STATE OF CALIFORNIA, DEPARTMENT OF)
MOTOR VEHICLES,)
17 Respondent.)

Appeal No. A-131-95

FINAL ORDER AFTER REMAND

18
19
20 TO: Richard Wilmshurst
Appellant in Pro Per
21 Forty-Niner Subaru/Isuzu
Post Office Box 49
22 Angels Camp, California 95222

23 Bernard Lu, Esq.
Attorney for Respondent
24 Department of Motor Vehicles
Legal Office E-128
25 Post Office Box 932382
26 Sacramento, California 94232-2380

27 AT ITS MEETING OF JANUARY 22, 1998, the members of the New Motor
28 Vehicle Board met and reconsidered the appropriate discipline in light

1 of Judge Cecil's decision that the Board had no authority for a
2 proposed cost recovery assessment of \$75,000.

3 The decision of the Department of Motor Vehicles ("Department")
4 was adopted in its entirety. The Order of the Department was amended
5 as follows:

6 ORDER

7 1. Appellant's license and special plates are suspended for a
8 period of nineteen (19) days. The time Vehicle Dealer's license 00049
9 has already been suspended, nineteen (19) days, shall be considered for
10 the period of suspension imposed. No additional suspension is ordered.

11 2. Appellant's license shall be placed on probation for a
12 period of four (4) years from the effective date of this order. During
13 this period of probation, Appellant shall obey all laws, rules, and
14 regulations governing the rights, duties, and responsibilities of a
15 vehicle dealer in the state of California.

16 SO ORDERED.

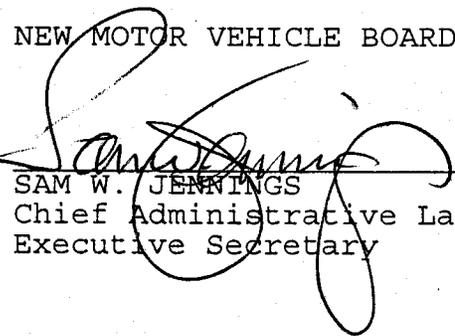
17

18 DATED: January 26, 1998

NEW MOTOR VEHICLE BOARD

19

20

By 
SAM W. JENNINGS
Chief Administrative Law Judge/
Executive Secretary

21

22

23

24

25 Alicia M.B. Fowler, Esq.

26

27 Sally Reed, Director, DMV

Tom Novi, Chief,

28 Occupational Licensing Branch, DMV

RECEIVED
New Motor Vehicle Board

NOV 20 1995

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

In the Matter of the Appeal of

FORTY-NINER SIERRA RESOURCES,
INC., A California corporation doing
business as FORTY-NINER SUBARU/
ISUZU,

Appellant,

vs.

STATE OF CALIFORNIA, DEPARTMENT
OF MOTOR VEHICLES,

Respondent.

APPEAL NO. A-131-95

ORDER IMPLEMENTING
FINAL ORDER

WHEREAS, the Final Order of the New Motor Vehicle Board in this matter became effective on October 18, 1995, was served upon Appellant in accordance with Vehicle Code section 3057, and

WHEREAS, the Final Order provides that the vehicle dealer's license no 00049, together with the special plates, issued by the Department of Motor Vehicles (hereinafter the "Department") to Forty-Niner Sierra Resources, Inc., doing business as Forty-Niner Subaru/Isuzu, are revoked, with the revocation stayed based upon compliance with certain conditions, including an actual suspension for a period of thirty (30) consecutive days to be selected by the Appellant, provided that the entire suspension takes place within ninety (90) days of the effective date of the Final Order, and

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1507 - 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888

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7 NEW MOTOR VEHICLE BOARD

8 In the Matter of the Appeal of)
9 FORTY-NINER SIERRA RESOURCES, INC.,)
10 a California corporation doing)
11 business as FORTY-NINER SUBARU/)
ISUZU,)
12 Appellant,)
13 vs.)
14 STATE OF CALIFORNIA, DEPARTMENT OF)
MOTOR VEHICLES,)
15 Respondent.)
16

Appeal No. A-131-95

FINAL ORDER

17 TO: Richard Wilmshurst
Appellant in Pro Per
18 Forty-Niner Subaru/Isuzu
Post Office Box 49
19 Angels Camp, California 95222

20 Marilyn Schaff, Esq., Chief Counsel
Attorney for Respondent
21 Department of Motor Vehicles
Legal Office
22 Post Office Box 932382
Sacramento, California 94232-2380
23

24 The above-entitled appeal was considered by the New Motor Vehicle
25 Board after considering the records and pleadings on file in this
26 matter as well as arguments of counsel for the parties; the following
27 determinations were made:

28 The decision of the Department of Motor Vehicles ("Department")

1 was adopted in its entirety. The Order of the Department was amended
2 as follows:

3 ORDER

4 The Vehicle dealer's license number 00049, together with the
5 special plates, issued by the Department to Forty-Niner Sierra
6 Resources, Inc., doing business as Forty-Niner Subaru/Isuzu, ar-
7 revoked. This revocation is hereby stayed based upon the following
8 conditions:

9 1. Appellant's license and special plates are suspended for a
10 period of thirty (30) consecutive days. The date for the commencement
11 of this thirty consecutive day suspension shall be selected by
12 Appellant, provided that the entire suspension takes place within
13 ninety (90) days of the effective date of this order.

14 2. Appellant shall pay the sum of \$75,000.00 to the Department
15 as reimbursement for costs sustained by the Department in this action.
16 Payment of these costs shall be made within 180 days of the effective
17 date of this order.

18 3. Appellant's license shall be placed on probation for a
19 period of four (4) years from the effective date of this order. During
20 this period of probation, Appellant shall obey all laws, rules and
21 regulations governing the rights, duties and responsibilities of a
22 vehicle dealer in the state of California.

23 This decision shall become effective forthwith.

24 DATED: October 18 1995

NEW MOTOR VEHICLE BOARD

25
26 By 
MANNING J. POST
27 President

28 Frank Zolin, Director, DMV
Mario Balbiani, Program Manager
Occupational Licensing, DMV

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7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD
9

10 In the Matter of the Appeal of)
11 WORLD NISSAN, INC., a Corporation,)
12 Appellant,)
13 vs.)
14 STATE OF CALIFORNIA, DEPARTMENT OF)
MOTOR VEHICLES,)
15 Respondent.)
16

Appeal No. A-132-95

ORDER CLARIFYING FINAL ORDER

17 TO: James G. Lewis, Esq.
18 Attorney for Appellant
2001 Wilshire Boulevard, Suite 520
19 Santa Monica, California 90403-5641
20

21 Marilyn Schaff, Esq., Chief Counsel
22 Attorney for Respondent
Department of Motor Vehicles
23 Legal Office
Post Office Box 932382
24 Sacramento, California 94232-2380

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1 The Final Order dated October 18, 1995, is hereby clarified as
2 follows:

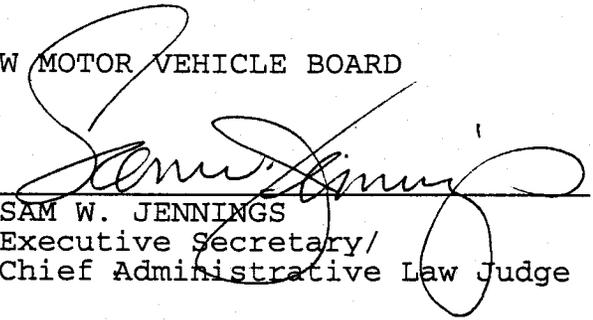
3 Discussion and Order

4 3a. The dealer's license and special plates no. D-06317,
5 heretofore issued to World Nissan, are suspended for a period of 30
6 days. This suspension shall, however, be stayed, subject to the terms
7 and conditions of probation as set forth in paragraphs 3b, 3c, and 3d.

8 In all other respects, the Final Order remains unchanged. This
9 Order Clarifying Final Order shall become effective forthwith.

10
11 DATED: October 31, 1995

NEW MOTOR VEHICLE BOARD

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13 By 

SAM W. JENNINGS
Executive Secretary/
Chief Administrative Law Judge

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26 Frank Zolin, Director, DMV
27 Mario Balbiani, Program Manager
Occupational Licensing, DMV

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7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD
9

10 In the Matter of the Appeal of)
11 WORLD NISSAN, INC., a Corporation,)
12 Appellant,)
13 vs.)
14 STATE OF CALIFORNIA, DEPARTMENT OF)
MOTOR VEHICLES,)
15 Respondent.)
16

Appeal No. A-132-95

FINAL ORDER

17 TO: James G. Lewis, Esq.
18 Attorney for Appellant
2001 Wilshire Boulevard, Suite 520
19 Santa Monica, California 90403-5641
20

21 Marilyn Schaff, Esq., Chief Counsel
22 Attorney for Respondent
Department of Motor Vehicles
23 Legal Office
Post Office Box 932382
24 Sacramento, California 94232-2380

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1 of Issue No. 8 and the Order¹. The Director ordered the dealer's
2 license and special plates revoked, without the provision for
3 reactivation and issuance of a probationary license.

4 World Nissan filed an Appeal with the New Motor Vehicle
5 Board on April 17, 1995, on the grounds the decision is not supported
6 by the findings (Vehicle Code section 3054(c)) and the penalty is not
7 commensurate with the findings (Vehicle Code section 3054(f)).

8 **MORAL TURPITUDE**

9 The Administrative Law Judge held World Nissan was convicted of
10 a crime involving moral turpitude. Counsel for the Department cited no
11 authority for the proposition that because the crimes involved
12 advertising violations and these violations related to the licensed
13 activities, that makes them crimes of moral turpitude under the Vehicle
14 Code. The members of the New Motor Vehicle Board disagree with these
15 contentions.

16 Vehicle Code section 11703(d) provides as follows: [t]he
17 Department may refuse to issue a license to a . . . dealer, if it
18 determines the applicant or business representative . . . has been
19 convicted of a crime or committed any act or engaged in any conduct
20 involving moral turpitude which is substantially related to the
21 qualifications, functions, or duties of the licensed activity.

22 The California Supreme Court has defined moral turpitude as "an
23 act of baseness, vileness or depravity in the private and social duties
24 which a man owes to his fellowmen, or to society in general, contrary
25 to the accepted and customary rule of right and duty between man and
26

27 ¹ Determination of Issues No. 8: "It would not be contrary to
28 the public interest to issue a properly conditioned probationary
license to respondent."

1 man. In re Craig (1938) 12 Cal. 2d 93, 97, 82 P. 2d 442. Moral
2 turpitude has also been described as any crime or misconduct committed
3 without excuse, or any 'dishonest or immoral' act not necessarily a
4 crime. In re Higbie (1972) 6 Cal. 3d 562, 569, 99 Cal. Rptr. 865, 493
5 P. 2d 97. The definition of moral turpitude depends on the state of
6 public morals and may vary according to the community or the times, as
7 well as on the degree of public harm produced by the act in question.
8 Golde v. Fox (1979) 98 Cal. App. 3d 167, 181, 159 Cal. Rptr. 864. Its
9 purpose as a legislated standard is not punishment but protection of
10 the public. Rice v. Alcoholic Beverage, etc., Appeals Bd. (1979) 89
11 Cal. App. 3d 30, 36, 152 Cal. Rptr. 285." Clerici v. Department of
12 Motor Vehicles (1990) 224 Cal. App. 3d 1016, 1026, 274 Cal. Rptr. 230.

13 The issue arises as to whether a violation of the New Motor
14 Vehicle Board's enabling statute [Veh. Code § 3000 et seq.] is moral
15 turpitude per se. Conviction of morally reprehensible crimes, such as
16 first degree murder, crimes which necessarily involve an intent to
17 defraud or to engage in dishonest acts for personal gain, establish
18 moral turpitude per se. In re Mostman (1989) 47 Cal. 3d 725, 736, 254
19 Cal. Rptr. 286 citing In re Kirschke (1976) 16 Cal. 3d 902, 904, 129
20 Cal. Rptr. 780, 549 P. 2d 548; In re Kristovich (1976) 18 Cal. 3d 468,
21 472, 134 Cal. Rptr. 409, 556 P. 2d 771. However, other crimes, such as
22 voluntary manslaughter or lesser infractions of the penal laws, do not
23 in and of themselves constitute moral turpitude per se. In re Mostman
24 (1989) 47 Cal. 3d 725, 736, 254 Cal. Rptr. 286 citing In re Strick
25 (1987) 43 Cal. 3d 644, 653, 238 Cal. Rptr. 397, 738 P. 2d 743; See
26 also In re Nevill (1985) 39 Cal. 3d 729, 733-734, 217 Cal. Rptr. 841,
27 704 P. 2d 1332.

28 The California State Courts have been reluctant to hold that any

1 but the most abhorrent crimes constitute moral turpitude per se in
2 cases where an individual's "vested and constitutionally protected
3 right to pursue any particular profession or vocation is at stake."
4 People v. Coad (1986) 181 Cal. App. 3d 1094, 1105, 226 Cal. Rptr. 386.

5 Based on the above analysis, the members of the New Motor Vehicle
6 Board hold that a violation of the Automobile Franchise Act [Vehicle
7 Code section 3000 et seq.] is not per se moral turpitude. If moral
8 turpitude exists in a given case, it must be based on the particular
9 circumstances surrounding the conviction(s) and whether the
10 conviction(s) demonstrates unfitness to practice as a licensed new
11 motor vehicle dealer, manufacturer, manufacturer branch, distributor,
12 distributor branch, or representative. In re Kelley (1990) 52 Cal. 3d
13 487, 494, 276 Cal. Rptr. 375; People v. Coad (1986) 181 Cal. App. 3d
14 1094, 1105, 226 Cal. Rptr. 386.

15 DISCUSSION AND ORDER

16 At its regularly scheduled meeting held on September 7, 1995,
17 the members of the New Motor Vehicle Board met and considered the above
18 referenced appeal. After hearing arguments of counsel for the parties,
19 and after considering all records, pleadings and evidence adduced in
20 this matter, the Board adopted the Decision of the Department of Motor
21 Vehicles with the following modifications:

22 1. The phrase "involving moral turpitude and" is stricken from
23 the finding 3.a. of the Department's Decision.

24 2. The phrase "involving moral turpitude and" is stricken from
25 determination 1 of the Department's Decision.

26 3. The Order as contained in the Department's Decision is
27 amended to read as follows:

28 ///

1
2 a. The dealer's license and special plates no. D-06317,
3 heretofore issued to World Nissan, are suspended for a period of 30
4 days. This suspension shall, however, be stayed until such time as
5 World Nissan, its officers, or directors apply for issuance of a new
6 occupational license as a new motor vehicle dealer, at which time the
7 stay shall be lifted and the suspension imposed.

8 b. Any subsequent occupational license as a new motor
9 vehicle dealer issued to World Nissan, its officers, or directors,
10 shall be probationary for a period of three years from the issuance of
11 such license.

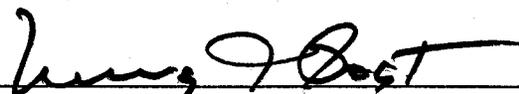
12 c. Appellant shall obey all laws, rules and regulations
13 governing the rights, duties and responsibilities of a vehicle dealer
14 in the State of California.

15 d. Any license issued to Appellant during the three year
16 probationary period shall be issued only as a probationary license, and
17 then only if it is determined that Appellant has fully complied with
18 the terms hereof, and that no separate cause for revocation or refusal
19 to issue a vehicle dealer license has intervened or exists.

20 This Order shall become effective forthwith.

21
22 DATED: October 18 1995

NEW MOTOR VEHICLE BOARD

23
24 By 
25 MANNING J. POST
President

26 Frank Zolin, Director, DMV
27 Mario Balbiani, Program Manager
Occupational Licensing, DMV

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Appeal of)
12 CHRYSLER MOTORS CORPORATION, A)
13 MANUFACTURER, dba CHRYSLER MOTORS)
CORPORATION,)
14 Appellant,)
15 vs.)
16 DEPARTMENT OF MOTOR VEHICLES,)
17 Respondent.)

Appeal No. A-133-96

ORDER REVERSING THE DECISION
OF THE DEPARTMENT OF MOTOR
VEHICLES AND REMANDING THE
MATTER TO TAKE ADDITIONAL
EVIDENCE AND RECONSIDER ITS
DECISION IN LIGHT OF THIS
ORDER

18
19 TO: Kevin J. Dunne, Esq.
Micki S. Singer, Esq.
20 Kirk C. Jenkins, Esq.
Attorneys for Appellant
21 Sedgwick, Detert, Moran & Arnold
One Embarcadero Center, 16th Floor
22 San Francisco, California 94111-3765

23 Bernard Lu, Esq.
Roger J. Sato, Esq.
24 Attorneys for Respondent
Department of Motor Vehicles
25 Legal Office E-128
P.O. Box 932382
26 Sacramento, California 94232-3820

27 ///

28 ///

1 Clarence Ditlow, Esq.
2 Richard Gold, Esq.
3 Center for Auto Safety
4 Attorneys for Amicus Curiae
5 2001 S Street, NW
6 Suite 410
7 Washington, DC 20009-1160

8 Darryl R. Wold, Esq.
9 Dana W. Reed, Esq.
10 Bradley W. Hertz, Esq.
11 Attorneys for Amicus Curiae
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13 Suite 3700
14 Los Angeles, California 90017-5853

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PROCEDURAL BACKGROUND

1. On August 17, 1994 the Department of Motor Vehicles ("Department" or "DMV") filed Accusation Case No. M-605 against Chrysler Motors Corporation ("Chrysler") for alleged violations of the California Vehicle Code¹ and California Civil Code.

2. These alleged violations pertain to the advertisement, sale, and delivery of 119 motor vehicles to purchasers in the State of California. The subject vehicles had been reacquired by Chrysler from the original retail buyers allegedly for nonconformities which would qualify each as a "lemon" under California's "Lemon Law," Civil Code sections 1793.2 and 1793.22.

3. A nine (9) day hearing on the merits was held before Keith A. Levy, Administrative Law Judge, Office of Administrative Hearings, commencing on February 28, 1995 and ending on March 10, 1995.

4. Evidence was received and the record was held open for submission of closing briefs. The record was closed and the matter was

¹All references herein are to the California Vehicle Code unless otherwise noted.

1 submitted on September 15, 1995. Following unsuccessful settlement
2 negotiations, a Proposed Decision was prepared and submitted for
3 adoption by the Director of the Department on April 29, 1996.

4 5. On May 30, 1996 the Acting Director of the Department issued
5 an Order Remanding the Proposed Decision for the purpose of taking
6 additional evidence on the issue of the economic impact of the proposed
7 penalty on the consumer public, local government entities, and
8 California dealers. The Order further directed the Administrative Law
9 Judge to consider other remedial action including:

- 10 1. Modification of the proposed length of
11 suspension;
- 12 2. Prohibit[ion of] the resale of any
13 repurchased vehicle by the manufacturer for a
14 reasonable period of time;
- 15 3. Establishment of periodic monitoring
16 requirements (to monitor the activity which
17 allegedly caused harm to consumers);
- 18 4. Extended restriction on the use of dealer
19 plates beyond the term of suspension; and
- 20 5. Any other additional terms and conditions to
21 ensure compliance with the lemon law
22 statutes.

23 6. At the pre-hearing on remand, the Administrative Law Judge
24 instructed the parties that the issue to be considered on remand was
25 specific to the imposition of the penalty. The Administrative Law
26 Judge requested that the parties brief the issue of whether the
27 Administrative Law Judge had the authority to consider evidence of
28 economic impact, particularly as it relates to non-parties and whether

1 the Administrative Law Judge had the authority to issue an order which
2 set up an option where Chrysler could avoid the suspension by making
3 monetary payments in lieu of suspension. The Administrative Law Judge
4 requested that the parties limit the number of witnesses who would be
5 testifying at the remand hearing.

6 7. On August 27 and August 28, 1996 the remand hearing was held.
7 On September 27, 1996 the Administrative Law Judge issued a Proposed
8 Decision Upon Remand which addressed the issue of economic impact of
9 the suspension on third parties. The Administrative Law Judge found
10 that the evidence produced at the Remand Hearing did not support
11 modification of the 60-day suspension imposed in the original Proposed
12 Decision.

13 8. On October 16, 1996 the Director of the Department adopted
14 the Proposed Decision Upon Remand of the Administrative Law Judge,
15 except Determination of Issues XI, and the Order, and substituted the
16 following therefore:

17 DETERMINATION OF ISSUES

18 1. Determination of Issues XI, paragraph 7, at pages
19 53-54, is stricken in its entirety.

20 ORDER

21 The manufacturer's license and special plates no. MFG-
22 004, heretofore issued to Chrysler Motors Corporation
23 (hereinafter "Chrysler"), are hereby revoked. However, the
24 revocation is stayed and Chrysler is placed on probation for
25 three (3) years on the following terms and conditions:

26 1. The manufacturer's license and special plates no.
27 MFG-004, heretofore issued to Chrysler, are
28 suspended for forty-five (45) days. During the

1 period of actual license suspension, Chrysler is
2 prohibited from shipping new or used vehicles into
3 the State of California, and from selling,
4 delivering, or otherwise supplying new or used
5 vehicles to California dealers. The use by
6 Chrysler of its manufacturer's special plates for
7 any purpose is prohibited during the period of
8 suspension only. However, during the [three (3)
9 year] period of the suspension, warranty
10 inspections and work may be performed by Chrysler
11 or its authorized representatives, and parts for
12 new or used vehicles may be shipped into the
13 state, sold to dealers, and supplied to dealers by
14 Chrysler or its authorized representatives.

15 2. Chrysler is prohibited from the resale in the
16 State of California of any vehicles repurchased by
17 the manufacturer or its dealers, whether the
18 dealers are acting on behalf of the manufacturer
19 or independently, which vehicles would qualify as
20 lemon law buybacks or good-will repurchases
21 (including trade-assisted repurchases), whether
22 repurchased within or outside the State of
23 California, during the period of probation. The
24 Department retains authority under Vehicle Code
25 section 8800 to suspend, cancel, or revoke the
26 registration of any such vehicle when the
27 Department is satisfied that the registration was
28 fraudulently obtained or erroneously issued in

1 violation of the Order.

2 3. All repurchases of vehicles in the State of
3 California by the manufacturer or any of its
4 dealers acting on behalf of the manufacturer,
5 including, but not limited to, prior daily rental
6 vehicles, former company vehicles, transit-damaged
7 vehicles, vehicles which would qualify as lemon
8 law buybacks or good-will repurchases (including
9 trade-assisted repurchases), shall be reported to
10 the Department of Motor Vehicles on a quarterly
11 basis, during the period of probation. Said
12 quarterly reports shall be in the format
13 prescribed by the Department and shall be directed
14 to the attention of Roger Kramer, Assistant
15 Director, Department of Motor Vehicles, Office of
16 Investigations and Audits (N-215), P.O. Box
17 825389, Sacramento, CA 94232-3890. The Department
18 may require reasonable additional information to
19 be submitted. Inadequate reports that are cured
20 by the prompt and timely submission of required
21 reasonable additional information shall not be
22 considered a violation of probation.

23 4. Chrysler shall obey all laws of the United States,
24 the State of California, or its subdivisions, and
25 the rules and regulations of the Department of
26 Motor Vehicles now or hereinafter in effect.

27 5. Should the Director of Motor Vehicles at any time
28 during the existence of this probationary period

1 determine upon satisfactory evidence that Chrysler
2 violated any of the terms and conditions of
3 probation, the Director may, after notice and
4 hearing, revoke or suspend Chrysler's license.

5 ISSUES PRESENTED

6 9. Section 3054 provides that the New Motor Vehicle Board
7 ("Board") has the power to reverse or amend a decision of the
8 Department of Motor Vehicles ("DMV" or "Department") if it determines
9 that any of the conditions enumerated in subsections (a) through (f) of
10 Section 3054 exist.

11 10. The Board may exercise the power granted pursuant to section
12 3054 if it determines any of the following:

- 13 (a) The department has proceeded without or in
14 excess of its jurisdiction.
- 15 (b) The department has proceeded in a manner
16 contrary to the law.
- 17 (c) The decision is not supported by the
18 findings.
- 19 (d) The decision is not supported by the weight
20 of the evidence in the light of the whole
21 record reviewed in its entirety, including
22 any and all relevant evidence adduced at any
23 hearing of the Board.
- 24 (e) There is relevant evidence, which in the
25 exercise of reasonable diligence, could not
26 have been produced or was improperly excluded
27 at the hearing.
- 28 (f) The determination or penalty, as provided in

1 the decision of the department is not
2 commensurate with the findings.

3 **FINDINGS OF FACT²**

4 a. Facts relating to whether the department has proceeded
5 without or in excess of its jurisdiction.
6 3054(a)

7 11. The Board makes no determination at this time as to whether
8 the Department has proceeded without or in excess of its jurisdiction.

9 b. Facts relating to whether the department has proceeded in a
10 manner contrary to the law.
11 3054(b)

12 12. The Board makes no determination at this time as to whether
13 the Department has proceeded in a manner contrary to the law.

14 c. Facts relating to whether the decision is not supported by
15 the findings.
16 3054(c)

17 13. In the Decision of the Department, a determination was made
18 that cause for discipline of Chrysler's license and special plates for
19 violation of sections 11713(a), 11705(a)(10) and (14), and 11705.4 was
20 established by Findings of Fact III and XXIII. Finding of Fact III
21 references the statutory language required for disclosures and the
22 requirement that the manufacturer shall provide a written warranty to
23 the buyer that the vehicle will be free for one (1) year from the
24 nonconformity which caused the vehicle to be reacquired. Finding of
25 Fact XXIII indicates that Chrysler failed to include the statutory
26 language in its Disclosure Notices and failed to provide a fully
27 detailed description of nonconformities identified in Chrysler's
28 business records.

²Findings of fact are grouped in the most logical category and have been considered for each of the conditions enumerated in section 3054.

1 14. Under Civil Code section 1793.22(f)(1)³ the nature of the
2 nonconformity experienced by the original buyer must be clearly and
3 conspicuously disclosed to a prospective buyer, lessee, or transferee.
4 Further, the prospective buyer, lessee, or transferee, must be notified
5 that the nonconformity has been corrected and the manufacturer must
6 warrant in writing that the vehicle will be free for one (1) year from
7 the defect experienced by the original buyer.

8 15. When Chrysler repurchased defective vehicles, the necessary
9 repairs were performed and a determination was made as to whether the
10 vehicle could be resold, or whether it should be disposed of. If the
11 vehicles were resold as used vehicles, they were sold only to
12 authorized Chrysler dealers at closed dealer auctions. Each vehicle
13 was accompanied by a package that included the Disclosure Notice, work
14 repair orders, a warranty information booklet, the warranty
15 registration card, and the dealer instruction booklet.

16 16. The current language of Civil Code section 1793.22(f)(1)
17 requires only that a vehicle may not be sold or transferred unless the
18 nature of the nonconformity is clearly and conspicuously disclosed, the
19 nonconformity is corrected, and the manufacturer warrants in writing
20 that the vehicle will be free of that nonconformity for a period of one
21 (1) year. No evidence was presented that the intent of the Legislature
22 in drafting this section was other than that. The one (1) year bumper-
23 to-bumper unlimited mileage warranties provided by Chrysler necessarily
24

25 ³ Findings of Fact IV, VI, VII, VIII, X, XI, XIII, XV, XVI, and
26 XVII may not support the Decision. The Administrative Law Judge
27 determined that Chrysler failed to comply with the requirements of Civil
28 Code section 1793.22, which was not enacted until 1993 (see 1992 ch.
1232 § 7), after the conduct at issue here. In light of the Board's
Order, however, it is unnecessary to determine what law governed
Chrysler's conduct in 1990 through 1994.

1 included the nonconforming part(s).

2 17. There are a number of other inconsistencies with the Findings
3 of Fact as they relate to the ultimate decision of the Director.
4 However, in light of the Board's Order, it is unnecessary to address
5 each of these.

6 d. Facts relating to whether the decision is not supported by
7 the weight of the evidence in the light of the whole record
8 reviewed in its entirety, including any and all relevant
9 evidence adduced at any hearing of the Board.
10 3054(d)

11 18. The Song-Beverly Consumer Warranty Act ("Song-Beverly"),
12 Civil Code section 1790 et seq., enacted in 1970, is applicable to
13 manufacturers or sellers who offer warranties in conjunction with a
14 sale of consumer goods. The original Act was enlarged in 1982 with the
15 addition of the "Lemon Law."

16 19. Pursuant to Civil Code section 1793.2(d) a manufacturer is
17 obligated to replace the vehicle or reimburse the buyer if the
18 manufacturer is unable to service the goods or conform them to the
19 applicable express warranty after a reasonable number of repair
20 attempts. Subdivision (e) established a standard for reasonableness
21 with respect to new motor vehicles.

22 20. Subdivision (e) was deleted in 1992, and incorporated into
23 the "Tanner Consumer Protection Act." (Civil Code section 1793.22)
24 This Act, not effective until January 1, 1993, established the
25 statutory presumption that a reasonable number of repair attempts have
26 been made if within one (1) year from delivery, or 12,000 miles,
27 whichever occurs first, either the same nonconformity has been subject
28 to repairs four (4) or more times by the manufacturer or its agents and
the buyer has notified the manufacturer of the need for repair of the
nonconformity, or the vehicle is out of service by reason of repair of

1 nonconformities by the manufacturer or its agents for a cumulative
2 total of more than 30 calendar days since delivery of the vehicle to
3 the buyer.

4 21. This presumption may not be asserted if a qualified third
5 party dispute resolution process exists, until after a consumer has
6 resorted to that process.

7 22. The Automotive Consumer Notification Act, Civil Code section
8 1793.23 *et seq.*, was added in 1989 for the purpose of identifying used,
9 unrepairable vehicles repurchased by a dealer or manufacturer. The law
10 placed the primary responsibility of disclosure of defects on the
11 manufacturer to ensure subsequent purchasers have been given sufficient
12 information about a vehicle's history prior to entering into a contract
13 for sale. The completion of a disclosure notice (a copy of which is
14 forwarded to the Department by the selling dealership, along with the
15 applicable titling documents) put DMV on notice to brand the title of a
16 particular vehicle by identifying that the vehicle had been replaced or
17 repurchased due to a defect pursuant to consumer warranty laws.

18 23. Thus, under the current Civil Code section 1793.22(f)(1) the
19 nature of the nonconformity experienced by the original buyer must be
20 clearly and conspicuously disclosed to the prospective buyer, lessee,
21 or transferee. Further, the prospective buyer, lessee, or transferee,
22 must be notified that the nonconformity has been corrected and the
23 manufacturer must warrant that the vehicle will be free for one (1)
24 year from the defect experienced by the original buyer.

25 24. When Chrysler repurchased a defective vehicle, the necessary
26 repairs were performed and a determination was made as to whether the
27 vehicle could be resold, or whether it should be disposed of. If the
28 vehicles were resold as used vehicles, they were sold only to

1 authorized Chrysler dealers at closed dealer auctions.

2 25. Each vehicle was accompanied by a package that included the
3 Disclosure Notice, work repair orders, a warranty information booklet,
4 the warranty registration card, and the dealer instruction booklet.
5 For every vehicle which was included in the Accusation, Chrysler, in
6 conformance with the provisions of Civil Code section 1793.22(f)(1),
7 provided a completed Disclosure Notice.

8 26. Civil Code section 1793.22(f)(1) provides that a manufacturer
9 must warrant to the new buyer, lessee, or transferee, in writing for a
10 period of one (1) year that the motor vehicle will be free of the
11 nonconformity experienced by the original buyer. Chrysler offered a
12 free one (1) year bumper-to-bumper unlimited mileage warranty with
13 every resold vehicle which warranted that the vehicle would be free of
14 any nonconformity. Chrysler's current customer relations manager
15 verified that 96 of the 119 supplemental one (1) year bumper-to-bumper
16 warranties offered by Chrysler for vehicles which were the subject of
17 the Accusation had been activated.

18 27. During the period relevant to the Accusation, Civil Code
19 section 1793.25 provided for reimbursement to manufacturers of new
20 motor vehicles amounts equal to sales tax which the manufacturer
21 included in making restitution to a buyer pursuant to subparagraph (B)
22 of paragraph (2) of Civil Code section 1793.2.

23 28. Initially, the Board of Equalization ("BOE") informed the
24 industry that reimbursement was authorized when vehicles were
25 repurchased as a result of a qualified third-party arbitration process.
26 This interpretation was broadened in 1988 (see Administrative Hearing
27 Exhibit 14, BOE Operations Memo 907 dated January 8, 1988) to include
28 vehicles repurchased pursuant to legal settlements as well.

1 29. Internal memoranda between BOE's Deputy Director of Sales and
2 Use Tax and BOE's Principal Tax Auditor reflect the adoption of a
3 "liberal" interpretation of the statute with respect to reimbursement
4 of sales tax. When faced with the fact that reimbursements were being
5 allowed in situations arising from repurchases due to customer
6 relations versus strictly interpreted "Lemon Law" situations, BOE
7 believed the demarcation of a "bright line" between the two situations
8 was difficult to establish. Thus, BOE decided to continue its policy
9 of reimbursement without regard to whether the repurchase was made in
10 accordance with the provisions of the "Lemon Law," or had in fact been
11 required under Civil Code section 1793.2. The Board interprets the
12 BOE's policy as one of encouraging the repurchase of vehicles from
13 dissatisfied customers, regardless of basis.

14 e. Facts relating to whether there is relevant evidence, which
15 in the exercise of reasonable diligence, could not have been
16 produced or was improperly excluded at the hearing.
3054 (e)

17 30. Carole Waggoner Bedwell ("Bedwell") testified pursuant to
18 subpoena before the Board on June 24, 1997. During the relevant
19 period, Bedwell was chief of the division responsible for branding
20 titles of repurchased vehicles.

21 31. Bedwell testified that between 1990 and 1992 the Department
22 branded 144 titles statewide. During 1993 and 1994 the Department
23 branded an additional 858 titles.

24 32. During this same period, Bedwell estimated that from 10,000
25 to 20,000 titles which were subject to title branding were not branded
26 by the DMV.

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28 ///

1 33. Prior to and during the Bedwell testimony, an assertion of
2 attorney/client privilege⁴ was raised by the Department with respect to
3 two (2) documents (identified below) which had not been produced by the
4 Department. These documents were not produced by the Department
5 pursuant to Chrysler's document subpoena in the trial below, nor were
6 they produced or identified in a privilege log pursuant to the Board's
7 document subpoena prior to Bedwell's testimony before the Board.

8 34. The "privilege" was asserted with respect to a DMV memorandum
9 dated January 27, 1995. The memorandum was addressed to Frank Zolin
10 ("Zolin"), then-director of the Department, and was signed by Bedwell
11 and Mary Anne Boese ("Boese"). None of the above-mentioned parties
12 (Zolin, Bedwell, or Boese) are attorneys.

13 35. The claim of "privilege" was allegedly based on the fact that
14 the document was prepared in part by Roger Sato ("Sato"), Esq., co-
15 trial counsel for the Department in this matter.

16 36. The substance of the first memorandum urged the adoption of
17 an interpretation of what constitutes a "lemon." The memorandum goes
18 on to suggest the Department adopt a presumption that a vehicle is a
19 lemon when: 1) the vehicle has been "through the adjudication and
20 arbitration process specified by law;" 2) the vehicle has been
21 repurchased by the manufacturer for the expressed reason that it is
22 non-repairable; or 3) the vehicle has been reported to the Board of
23 Equalization for a sales tax refund or credit "for the reason that it
24 was a buyback."

25 ///

26
27 ⁴At the July 17, 1997, Board Meeting the claim of privilege was
28 verbally amended by counsel for the Department to one of "Privilege for
Official Information", Evidence Code section 1040.

1 37. The January 27, 1995, memorandum indicated that once it (the
2 memorandum) had been reviewed, the Director would make policy decisions
3 on how to proceed. Bedwell testified that there were discussions
4 thereafter concerning the policy. Those present at the meetings
5 included Bedwell, Madeline Rule ("Rule") of the DMV legal office, Mary
6 Anne Boese ("Boese") the Chief of DMV Investigations/Occupational
7 Licensing, Zolin, Anne Bersinger, then-Chief Deputy Director, and
8 possibly Sato. Bedwell could not testify with certainty whether any
9 departmental policies were implemented as a result of that meeting.
10 Bedwell also did not review the January 27, 1995, memorandum before or
11 during her testimony before the Board.

12 38. The attorney/client privilege⁵ was also asserted with respect
13 to a follow-up DMV memorandum dated February 6, 1995. The memorandum,
14 drafted by Bedwell and Boese, was also addressed to Zolin. None of the
15 above-mentioned parties (Zolin, Bedwell, or Boese) are attorneys.

16 39. The claim of "privilege" was based on the fact that the
17 document was prepared in part by Sato.

18 40. The substance of the memorandum addressed Zolin's apparent
19 concern about basic assumptions as to what determined a vehicle to be a
20 "lemon."

21 41. Two days after the testimony of Bedwell before the Board, the
22 Department withdrew its claim of "privilege" and produced the
23 documents.

24 42. The attorney/client privilege was asserted with respect to a
25 third memorandum (referred to in the memorandum dated February 6, 1995)
26 dated January 12, 1995. This memorandum was not produced by the
27

28 ⁵see FN 3 *supra*.

1 Department pursuant to Chrysler's document subpoena in the trial below,
2 nor was it produced or identified in a privilege log pursuant to the
3 document subpoena included with the Bedwell subpoena.

4 43. At the July 17, 1997, Board meeting the Department's counsel
5 informed the Board that the January 12, 1995 document was a draft of
6 the February 6, 1995 memorandum, that it was superseded by the February
7 6, 1995 memorandum, and that it may have been discarded or destroyed.
8 No testimony supports this representation.

9 44. The Board finds the Department's assertion of "privilege",
10 under any of the various Evidence Code sections cited, to be utterly
11 without merit. The memoranda suppressed by the Department were
12 prepared by public employees charged with implementation of public laws
13 (see, e.g. RLI Insurance Group v. Superior Court, 51 Cal.App.4th 415,
14 438 (1996) [there "is a manifest public interest in the avoidance of
15 secret law and a correlative interest in the disclosure of an agency's
16 working law. The revelation of an agency's working law promotes its
17 accountability to the public and the consistent, predictable and
18 nonarbitrary application and enforcement of the law." (Citations
19 omitted)]). No attorney/client or other legitimate privilege was
20 implicated. There was no good faith basis for the suppression of these
21 documents. The misconduct of the Department in wrongfully concealing
22 this probative evidence is particularly disturbing in light of the
23 Department's unique statutory role as both prosecutor and enforcer of
24 its own penalties. The fact that the suppressed documents deal
25 directly with the Department's own interpretation of the very
26 provisions it seeks to enforce in this proceeding further exacerbates
27 its misconduct.

28 ///

1 45. Under section 1650, the authority for administration and
2 enforcement of the provisions of the Vehicle Code relating to the
3 Department and the adoption and enforcement of regulations as necessary
4 to carry out the provisions of the Code relating to the Department,
5 reside with the Director. During Bedwell's testimony, Zolin was
6 identified by DMV Chief Counsel Marilyn Schaff ("Schaff") as, under
7 statute, custodian of records for the Department. Bedwell's testimony
8 indicates that the ordinary course of practice for departmental policy
9 and procedural memoranda flowed from the originator then, prior to
10 dissemination, to the office of the Director. As such, Zolin
11 undoubtedly possesses information directly relevant to Chrysler's
12 ability to advance its claim in this matter, including his knowledge of
13 previously suppressed memoranda.

14 46. The Department's lack of an affirmative representation that
15 Chrysler's subpoenas have been fully complied with, and its apparent
16 willingness to withhold potentially relevant, non-privileged internal
17 documents interfered with Chrysler's right to fully defend its position
18 in this matter. Chrysler's rights may be further prejudiced without an
19 opportunity to examine Bedwell, Boese, Zolin, and possibly others
20 knowledgeable about departmental policies and procedures relating to
21 the substantive issues included in the Accusation.

22 47. The Board finds that Chrysler's right to a full and fair
23 hearing was deprived by the Department's misconduct. Relevant evidence
24 which should have been produced for the hearing was not.

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1 f. Facts relating to whether the determination or penalty, as
2 provided in the decision of the department is not
3 commensurate with the findings.
3054(f)

4 48. At the remand hearing, expert testimony was received from
5 William P. Guptill ("Guptill"). In addition, three (3) Chrysler
6 dealers - Charles O. Swift ("Swift"), Richard Allen Evans ("Evans"),
7 and Clarence Albert Williams ("Williams") - testified.

8 49. Guptill was retained as an expert by Chrysler to investigate
9 the economic impact a 60-day license suspension would have on Chrysler
10 dealers in California. Guptill testified that the average dealer would
11 lose around \$100,000, with the entire California dealer body suffering
12 a loss of \$24,000,000, conservatively⁶.

13 50. The losses would be comprised of loss of gross profit, loss
14 of income from financing and insurance income, and loss from service
15 contract sales. An offset for savings from not having as many vehicles
16 on the dealers' lots was applied to the calculations.

17 51. Guptill testified that front-loading of dealerships prior to
18 the suspension is not practical due to lack of additional space for
19 storage, security, and costs. Guptill testified that there would also
20 be losses from a decline in parts and service sales during the
21 suspension period.

22 52. Lastly, Guptill testified there would be additional losses to
23 the dealerships as salespeople go elsewhere for jobs. There will be
24

25
26 ⁶Because the data submitted in Guptill's report was based on a 60-
27 day suspension, see the figures submitted in the *amicus curiae* brief
28 submitted by Chrysler-Plymouth of San Francisco; Dodge/Chrysler/Ply-
mouth/Jeep/Eagle of Vacaville; Huntington Jeep Eagle Hummer; Glenn E.
Thomas Dodge; Haddad Dodge/Jeep Eagle; and Glendale Dodge for recal-
culated amounts (beginning a paragraph 62, *infra*).

1 additional costs when these employees need to be replaced after the
2 suspension.

3 53. New vehicle sales will decrease from prior monthly average
4 sales levels as inventory is sold and not replaced. For each vehicle
5 not sold, the gross profit (vehicle sales price less vehicle cost) on
6 that vehicle will be lost to the dealer.

7 54. The average lost gross profit per dealer is \$111,232 and
8 \$26,695,680 for all dealers. After reducing these figures for related
9 expenses not incurred, the average dealer would lose \$102,656 and
10 \$24,637,263 for all dealers. Applying a \pm 5 percent factor produces a
11 per dealer financial loss range of \$97,523 to \$107,789 and a loss range
12 of between \$23,405,400 and \$25,869,126 for all dealers⁷.

13 55. No consideration was given to post-suspension period lost
14 profits from lost vehicle sales nor the related gross profit and income
15 losses.

16 56. There will be losses of profit and income beyond the vehicle
17 gross profit loss that will be encountered because of the lost vehicle
18 sales as follows: (1) finance and insurance - the average dealer will
19 lose \$29,504 and \$7,080,960 for all dealers; (2) service contracts -
20 the average dealer will lose \$31,360 and \$7,526,400 for all dealers;
21 (3) pre-delivery inspection - not quantifiable; and (4) sale of
22 special products - not quantifiable.

23 57. The lost vehicle sales will cause a loss in dealer gross
24 profits from parts sales and service sales.

25 58. Gross profits from used vehicle sales will most likely suffer
26 a decline because fewer trade-ins will be acquired because of the
27

28 ⁷see FN 5, *supra*.

1 decrease in new vehicle sales. This will decrease the quantity of used
2 vehicles in the used inventory and that decrease will lead to some lost
3 sales and therefore to lost gross profits. These losses are not
4 quantifiable without further study.

5 59. Long-term negative economic impacts on Chrysler dealers would
6 include the following: (1) loss of top salespersons; (2) decline in
7 CSI (Customer Satisfaction Index); and (3) future loss from lack of
8 vehicles.

9 60. Guptill testified that a suspension of 60 days may put some
10 dealers out of business and will increase the risk for all dealers.
11 Financial losses will reduce each dealer's working capital and net
12 worth compared to what they would have been without the financial loss.
13 The specific effects are as follows: (1) loss of working capital
14 which measures the ability of the dealership to pay its bills timely,
15 i.e., solvency; (2) danger from termination of credit; (3) dealers
16 with comparatively low vehicle inventories at the suspension's
17 commencement would likely be among those financially hurt the most; and
18 (4) suspension timing would figure into the amount of loss.

19 61. Other economic considerations for which no attempt to
20 quantify the amount of loss, include the following: (1) increased
21 employee per unit cost; and (2) effect on vendors and dealers.

22 62. Because the suspension imposed in the Proposed Decision was
23 reduced by the Director, the calculations of loss identified in the
24 report prepared by Guptill would be proportionally reduced by the
25 imposed 45-day suspension.

26 63. The average dealer would likely lose 37 new vehicle sales
27 during a 45-day suspension. The financial loss for the average dealer
28 would be \$59,348.

1 64. The combined financial loss from a 45-day suspension for all
2 of Chrysler's California dealers would be \$14,243,520.

3 65. The above figures do not include losses suffered by
4 reductions in other dealership departments (parts, service, etc.), or
5 intangible losses such as loss of sales personnel, market share, and
6 loss in customer satisfaction ratings.

7 66. Swift owns a Chrysler dealership in Sacramento. Swift has
8 been licensed as a new motor vehicle dealer in California for over 30
9 years. During the period July 31, 1995, to June 30, 1996, Auto World
10 sold approximately 1,800 new car units. Swift testified that the
11 primary problems with front-end loading prior to a license suspension
12 would include flooring costs, security, damage costs, and the
13 possibility of theft. With regard to flooring costs, Swift testified
14 that the normal flooring cost of a \$20,000 vehicle is approximately
15 \$5.55 per day. If the proposed license suspension takes place, that
16 cost could potentially jump to \$15.00 per day if a dealer has to lease
17 storage space. Swift testified that he told Chrysler officials he
18 would prefer this matter be resolved in a way that does not result in
19 an actual license suspension for Chrysler.

20 67. Evans is the owner or corporate officer of a Jeep/Eagle
21 dealership. He was called by the Department as an adverse witness.
22 Evans testified he believes he sells approximately 136 units per month
23 (based on a 12 month average). His dealership employs 14 salespeople.
24 Evans testified that he would attempt to "order ahead" if the
25 suspension occurs. Evans felt that if the suspension was imposed,
26 there would be losses because forecasting dealership needs that far in
27 advance is difficult and mistakes can be made. Further, he stated
28 additional costs would be incurred, i.e., security, care of vehicles on

1 the lot, flooring, and lower profit per vehicle if there are too many
2 cars at the facility. Finally, Evans testified that he feels he might
3 lose valuable employees to competing line-makes.

4 68. Williams, owner of Dodge/Chrysler/Plymouth/Jeep/Eagle of
5 Vacaville, was called by the Department as an adverse witness.
6 Williams stated that his dealership would be considered "medium-sized."
7 The dealership employs 13 salespeople, and sells approximately 100 cars
8 per month, 30 of which are used vehicles. Of those 30, approximately
9 seven (7) are Chrysler buybacks. Williams indicated that his
10 dealership carries the complete Chrysler line. At any given time
11 Williams stated, he may have a 90 day supply of units on the premises.
12 If faced with a 60 day suspension, he would find it "impossible" to
13 order extra inventory.

14 69. There are some 240 independent dealers of Chrysler products
15 licensed to operate in the State of California. There is no dispute
16 that only a handful of those dealers were involved in the transactions
17 which are the subject of this Accusation. In fact, not one Chrysler
18 dealer has been charged with wrongdoing by the Department. There is
19 also no dispute that the impact of the suspension (loss of sales, loss
20 of gross profits, lowered CSI ratings, loss of key salespersons, etc.)
21 will affect the entire California dealer body irrespective of the
22 dealers' complicity, or lack thereof, in the alleged violations.

23 70. On appeal the Department correctly observed that "[t]he
24 Board's primary purpose is the protection of dealers..." (DMV Brief on
25 the Merits filed June 16, 1997, at p. 18.) The Board finds that the
26 impact of the proposed penalty will disproportionately affect dozens if
27 not hundreds of dealers who have not been accused of any wrongful
28 conduct. The Board further finds that the impact of the penalty is not

1 specific to dealers who have been charged with wrongful conduct under
2 the Accusation.

3 DETERMINATION OF ISSUES

4 1. The Decision of the Department of Motor Vehicles is reversed
5 in that:

6 a) The Board determines that the Decision is not supported by
7 the findings. (Section 3054(c).)

8 b) The Board determines that the Decision is not supported by
9 the weight of the evidence in the light of the whole record reviewed in
10 its entirety, including any and all relevant evidence adduced at any
11 hearing. (Section 3054(d).)

12 c) The Board determines that there is relevant evidence, which
13 in the exercise of reasonable diligence, could not have been produced
14 or was improperly excluded or withheld at the hearing. (Section
15 3054(e).)

16 d) The Board determines that the determination or penalty, as
17 provided in the Decision of the Department is not commensurate with the
18 findings. (Section 3054(f).)

19 ORDER OF REMAND

20 IT IS HEREBY ORDERED THAT the decision of the Department in the
21 above-entitled matter is remanded to take additional evidence and
22 reconsider its decision based on the following issues:

- 23 1. Whether the DMV's violation of prior subpoenas and document
24 requests by withholding relevant, non-privileged evidence,
25 including memoranda dated January 12, 1995, January 27, 1995,
26 and February 6, 1995, from Carole Bedwell and Mary Anne Boese
27 to then-Director Frank Zolin, is cause for dismissal of the
28 Accusation or for imposition of other sanctions against the

1 Department.

- 2 2. Whether the DMV wrongly withheld any additional relevant,
3 non-privileged evidence.
- 4 3. To hear testimony from Carole Bedwell, Mary Anne Boese, Frank
5 Zolin, and other knowledgeable persons regarding the
6 previously withheld documents and all issues related thereto.
- 7 4. To consider whether the evidence suppressed by the DMV
8 otherwise affects the prior ruling of the Administrative Law
9 Judge.
- 10 5. To determine and make findings as to what were the policies
11 and procedures of the DMV, if any, during the period relevant
12 to the Accusation concerning the branding of titles of all
13 vehicles repurchased including vehicles repurchased:
 - 14 a. following a decision or settlement of a Customer
15 Arbitration Board case;
 - 16 b. following voluntary buyback; and
 - 17 c. following adjudication.
- 18 6. To determine and make findings whether the DMV's policies and
19 procedures, if any, included any rebuttable presumptions as
20 to what constituted a warranty buyback.
- 21 7. To determine whether DMV was in compliance with its own
22 internal policies and procedures regarding title branding
23 during the period relevant to the Accusation.
- 24 8. To make findings regarding the efforts, if any, by the DMV
25 prior to 1992 to notify dealers and manufacturers of its
26 policies regarding title branding of vehicles repurchased.
- 27 9. To make specific findings regarding the actual identity of
28 all of the dealers involved in the alleged failure to notify

1 the DMV of the 119 vehicles which allegedly were not branded.

2 10. To consider alternative sanctions, including but not limited
3 to, sanctions specifically limited to those dealers who
4 actually resold the 119 vehicles at issue.

5 11. To consider whether the due process protection of dealers
6 whose conduct was not implicated would be violated by the
7 Proposed Decision Upon Remand of the Administrative Law Judge
8 as adopted by the Director.

9 12. To consider whether any applicable Vehicle or Civil Code
10 sections in effect during the period relevant to the
11 Accusation were unconstitutionally vague.

12 13. The Director shall allow the dealers appearing as Amicus
13 Curiae to appear as parties in the remand.

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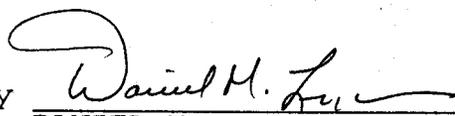
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1 IT IS SO ORDERED.

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DATED: August 18, 1997

NEW MOTOR VEHICLE BOARD

By 
DANIEL M. LIVINGSTON
President
New Motor Vehicle Board

27 Sally Reed, Director, DMV
Tom Novi, Chief,
28 Occupational Licensing Branch, DMV

1 NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-2080

CERTIFIED MAIL

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7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD
9

10 In the Matter of the Appeal of)
11 TED JONES FORD, INC., a Corporation,)
12 dba TED JONES FORD,)
13 Appellant,)
14 vs.)
15 DEPARTMENT OF MOTOR VEHICLES,)
16 Respondent.)

Appeal No. A-134-97

FINAL ORDER

17 In the Matter of the Appeal of)
18 TED JONES FORD, INC., aka TED JONES)
19 FORD 1974 CORPORATION, a)
20 corporation, dba TED JONES FORD,)
21 and dba TED JONES ISUZU,)
22 Appellant,)
23 vs.)
24 DEPARTMENT OF MOTOR VEHICLES,)
25 Respondent.)

Appeal No. A-135-97

25 TO: John B. Stephens, Esq.
26 Rachna S. Sizemore, Esq.
27 Attorneys for Appellant
28 Paul, Hastings, Janofsky & Walker LLP
695 Town Center Drive
Seventeenth Floor
Costa Mesa, California 92626-1924

1 Bernard Lu, Esq.
2 Attorney for Respondent
3 Department of Motor Vehicles
4 Legal Office E-128
5 P.O. Box 932382
6 Sacramento, California 94232-3820

7 ORDER

8 The above-entitled consolidated appeals were considered by all
9 members of the New Motor Vehicle Board ("Board") at its August 21,
10 1997, general meeting. After considering the records and pleadings on
11 file in this matter as well as arguments of counsel for the parties;
12 the following determinations were made:

13 1. The Decision of the Department of Motor Vehicles
14 ("Department") in Appeal No. A-134-97 (Department Case No. 5458) was
15 adopted in its entirety.

16 2. The Decision of the Department in Appeal No. A-135-97
17 (Department Case No. 4936) was adopted in its entirety.

18 3. The Order of the Department in Appeal No. A-135-97
19 (Department Case No. 4936) was amended as follows:

20 Appellant's license No. D-17469 shall be placed on probation for
21 a period of one (1) year from the effective date of this order.
22 During this period of probation, Appellant shall obey all laws,
23 rules and regulations governing the rights, duties and
24 responsibilities of a vehicle dealer in the state of California.
25 This decision shall become effective forthwith.

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1 IT IS SO ORDERED.

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DATED: September 4, 1997

NEW MOTOR VEHICLE BOARD

By *Daniel M. Livingston*
DANIEL M. LIVINGSTON
President
New Motor Vehicle Board

27 Sally Reed, Director, DMV
Tom Novi, Chief,
28 Occupational Licensing Branch, DMV