

1 NEW MOTOR VEHICLE BOARD
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CERTIFIED MAIL

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6 STATE OF CALIFORNIA
7 NEW MOTOR VEHICLE BOARD
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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.)

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22 Marilyn Schaff, Esq.
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Staff Counsel
24 Attorneys for Respondent
Department of Motor Vehicles
Legal Office
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Sacramento, California 94232-3820

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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.

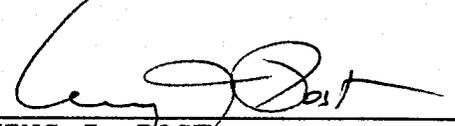
2. Respondent is subject to the terms and conditions as
set forth in paragraphs B through G, inclusive, of the
Director's Decision.

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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