

1 NEW MOTOR VEHICLE BOARD  
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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 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. )  
\_\_\_\_\_ )

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18 TO: John D. McGuire, Esq.  
Attorney for Appellant  
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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

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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 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.

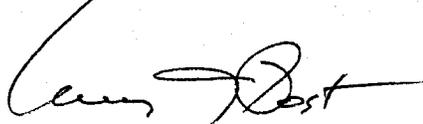
26 2. Respondent is subject to the terms and conditions as  
27 set forth in paragraphs B through G, inclusive, of the  
Director's Decision.  
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It was the consensus of the members of the Board that the types of violations at issue in this matter are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