

1 NEW MOTOR VEHICLE BOARD  
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2 Sacramento, California 95814  
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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 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  
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21 Marilyn Schaff, Esq.  
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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, 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