

STATE OF CALIFORNIA

NEW CAR DEALERS POLICY & APPEALS BOARD

In the Matter of)
DANA CHEVROLET, INC.,)
A California Corporation,)
Appellant,) Case No. A-13-71
vs.) Filed: May 17, 1971
DEPARTMENT OF MOTOR VEHICLES,)
Respondent.)

Time and Place of Hearing: April 14, 1971, 10:30 a.m.
City Council Chambers
3300 Newport Boulevard
Newport Beach, California

For Appellant: Deryl D. Shumway
Attorney at Law
10243 Paramount Boulevard
Downey, California 90241

For Respondent: Honorable Evelle Younger
Attorney General
By: Mark Leicester
Deputy Attorney General

FINAL ORDER

In the Decision ordered December 7, 1970, by the Director of Motor Vehicles, pursuant to Chapter 5, Part 1, Division 3, Title 2 of the Government Code, it was found that appellant:
(1) Failed in 79 instances to give respondent written notice of the transfer of the interest in certain vehicles as required

by Section 5901 Vehicle Code; (2) wrongfully and unlawfully failed in 116 instances to mail or deliver to respondent the report of sale of used vehicles together with such other documents and fees required to transfer registration of the vehicles within the 20-day period allowed by law; (3) wrongfully and unlawfully failed in 69 instances to mail or deliver to respondent the reports of sale of new vehicles together with such other documents and fees required to register the vehicles within the 10-day period allowed by law; (4) reported to respondent in one instance a date of sale other than the true date of sale of a certain vehicle; (5) filed with respondent in 5 instances a false certificate of non-operation of certain vehicles; (6) reported to respondent in one instance a date other than the true date for the first date of operation of a certain vehicle; (7) in 4 instances, included as an added cost to the selling price of certain vehicles, registration fees in excess of the fees due and payable to the State; and (8) failed in one instance to affix the operating copy of the report of sale and the paper license plate to a certain vehicle.

The Decision of the Director of Motor Vehicles revoked the license, certificate and special plates of appellant. The revocation was stayed and appellant placed on probation for a period of one year. Terms and conditions of probation are:

- (1) Appellant's license, certificate and special plates shall be suspended for a period of 5 days; and
- (2) Appellant shall comply with all laws of the United States, the State of California, its political subdivisions and with all the rules and regulations of the Department of Motor Vehicles.

An appeal was timely filed with this board pursuant to Chapter 5, Division 2 of the Vehicle Code.

At the administrative hearing, appellant did not attempt to controvert the evidence introduced by respondent. Further, there was no serious contention made before this board, either orally or via briefs, that the evidence produced by respondent was insufficient to support the findings of the Director of Motor Vehicles. Thus, the only issue before this board concerns the appropriateness of the penalty imposed by the Director of Motor Vehicles.

I. IS THE PENALTY IMPOSED BY THE DIRECTOR OF MOTOR VEHICLES COMMENSURATE WITH HIS FINDINGS?

Appellant's president, Paul Dombroski, contended at the administrative hearing and appellant contended on appeal that the acts charged in the Accusation occurred because of the incompetence or intentional misdeeds of one Warren Gardner, a State parolee. At the urging of Gardner's parole agent, Gardner was employed by appellant and placed in charge of matters involving the Department of Motor Vehicles. The parole agent informed Mr. Dombroski that Gardner had been

incarcerated for wrongful acts regarding two automobile dealers but had made complete restitution. The agent believed that Gardner should be given another opportunity.

The incompetency or intentional misconduct of Gardner may explain violations of the law on the part of appellant but Gardner's acts or omissions do not excuse such violations; neither can they in any way mitigate the penalty. Appellant is responsible for the acts or omissions of its officers and employees.

In our view, a prudent businessman, knowing that one of his employees was a paroled prisoner who had been incarcerated for criminal conduct involving other automobile dealers, would exercise a higher degree of supervision over that employee than over those employees not demonstrating a proclivity for criminal behavior.

Appellant failed in 264 instances to timely file required documents with respondent, furnished respondent with false information on 7 occasions, overcharged purchasers of automobiles for vehicle license fees in 4 instances and failed in one instance to properly affix certain documents to a vehicle it sold. According to testimony of Mr. Dombroski, appellant had received a warning letter from the Department of Motor Vehicles during March 1969. The letter was for the purpose of alerting appellant to the fact that it was

committing violations of certain laws. These violations were of the same nature as those charged in the Accusation and found by respondent to be true. Mr. Dombroski testified that he took corrective action, after receiving the letter, by replacing Warren Gardner. This action took place, according to Mr. Dombroski, about 90 days after receiving the letter which would have been sometime during June 1969. But, a review of the exhibits attached to the Accusation shows that a substantial portion of the violations occurred subsequent to June of 1969. The conclusion is inescapable that replacing Gardner was not the only corrective action required.

The record before us demonstrates that appellant elected to view the laws governing an automobile dealer in a casual and indifferent manner. Appellant followed a course of wrongful conduct which shows a disregard of its responsibilities to customers, the rights of the public at large, and the orderly discharge of the appellant's duties regarding vehicle registration. A license to sell automobiles imposes both burdens and benefits upon the licensee. This licensee has sought to reap the benefits but has demonstrated a lack of proper concern towards meeting the burdens. Appellant was content to place a vital part of its business operation in the hands of one with a background requiring a high degree of supervision; appellant failed to exercise such a degree of

supervision. The record demonstrates that the corrective measure was not, in fact, corrective.

We said in *Midway Ford Sales vs. Department of Motor Vehicles (A-11-70)*:

"The primary purpose of proceedings to discipline new car dealer licensees is to protect the general public from wrongful acts of the licensee. There are, of course, circumstances under which this goal can be accomplished only by a revocation or suspension of the license. An actual suspension of the license may be necessary to impress upon the licensee that conduct inimical to the welfare of the general public in the regulated business will not be tolerated by the enforcing agency."

We have exercised our independent judgment upon the record before us and have concluded that a cessation of appellant's privilege of selling automobiles for a period of time is required to impress upon appellant that the laws regulating automobile dealers must be obeyed. Appellant was given fair warning but chose not to heed it.

The Decision of the Director of Motor Vehicles is affirmed in its entirety.

This Final Order shall become effective June 1, 1971.

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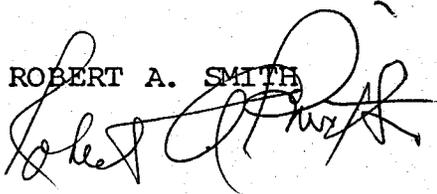
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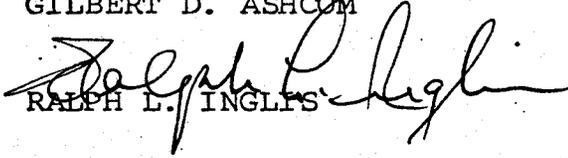
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