

1 NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
2 Sacramento, California 95814
Telephone: (916) 445-1888
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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 WORLD NISSAN, INC., a Corporation,)
12 Appellant,)
13 vs.)
14 STATE OF CALIFORNIA, DEPARTMENT OF)
15 MOTOR VEHICLES,)
16 Respondent.)

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:

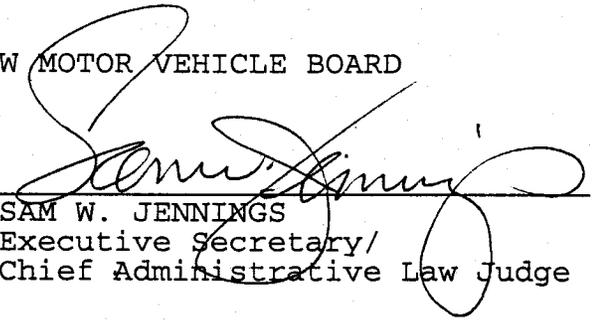
3 Discussion and Order

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.

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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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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
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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:

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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.

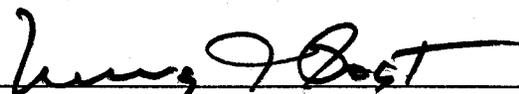
12 c. Appellant shall obey all laws, rules and regulations
13 governing the rights, duties and responsibilities of a vehicle dealer
14 in the State of California.

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

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24 By 
25 MANNING J. POST
President

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

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