

STATE OF CALIFORNIA  
NEW CAR DEALERS POLICY & APPEALS BOARD

CHASE-NESSE AUTO, INC., dba	)	
EARLE NESSE FORD,	)	
	)	
Appellant,	)	Case No. A-19-71
	)	
vs.	)	Filed: February 29, 1972
	)	
DEPARTMENT OF MOTOR VEHICLES,	)	
	)	
Respondent.	)	

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Time and Place of Hearing: February 9, 1972, 11:00 a.m.  
Director's Conference Room  
Department of Motor Vehicles  
2415 First Avenue  
Sacramento, California

For Appellant: Mr. Earle A. Nesse  
R. R. 1, Box 20  
Sutter Creek, CA 95685

For Respondent: Honorable Evelle J. Younger  
Attorney General  
By: Frank A. Iwama  
Deputy Attorney General

FINAL ORDER

The Director of Motor Vehicles, pursuant to Chapter 5, Part 1, Division 3, Title 2, of the Government Code, issued a decision, effective November 11, 1971, wherein it was found that appellant:

(1) failed in one instance to timely submit to respondent a written notice of the transfer of interest in a certain motor vehicle;

(2) reported to respondent in one instance a date other than the true date for the first date of operation of a certain motor vehicle thereby making a false statement and concealing a material fact in the application for registration of the vehicle; (3) in one instance included as an added cost to the selling price of a certain vehicle a registration fee in excess of the fee due and payable to the state; (4) disconnected, turned back or reset the odometer on four vehicles in order to reduce the mileage indicated on the odometer gauge; and (5) permitted the use of the dealer's special plates in a manner not authorized by law. The Director also found that Earle Nesse, President of appellant, had been convicted in the Justice Court of California, County of Amador, Amador Judicial District, State of California, for the criminal offense of Wilfully and Unlawfully Turning Back or Resetting an Odometer, a violation of Section 11713(n) of the California Vehicle Code, a crime involving moral turpitude.

It was further found that appellant "...systematically followed the practice of resetting odometers in a very substantial fashion." The resetting of odometers occurred mainly on demonstrators resulting in not only misleading the purchasers but also improperly and illegally extending the period of the manufacturer's warranty.

In his original decision, the Director of Motor Vehicles found that appellant's "...president now candidly admits this type of misconduct and concedes that 'perhaps' as many as 20 odometers have been turned back over the last two years or so, he initially only admitted one such incident, gradually adding admissions as

evidence was presented to him." The Director granted appellant's request for reconsideration and, upon reconsidering the matter, amended this finding as follows: "Although respondent's (appellant's) president now candidly admits this type of misconduct and concedes that 'perhaps' as many as twelve odometers have been turned back from January 1970 to January 1971, he initially only admitted one such incident, gradually adding admissions as evidence was presented to him."

The Director of Motor Vehicles ordered the revocation of appellant's license, certificate and special plates. An appeal was timely filed with this board pursuant to Article 2, Chapter 6, Division 2, Vehicle Code.

At the administrative hearing, counsel for appellant stipulated to the truth of all allegations in the accusation with the exception of that portion of Paragraph VII that Mr. Earle A. Nesse "...is not of good moral character" (R.T. 3, lines 24-26).

Appellant denied on appeal that it "systematically" tampered with odometers, as found by the Director, and contended, "It is unrealistic to believe that this occurred in this small community..." (Appellant's Response Brief, P.3). We dispose of the issue by pointing out that there is nothing in the applicable statute, Section 11713(n) Vehicle Code, which requires, as a condition to license discipline, a showing that odometers were manipulated "systematically" or pursuant to an organized or established plan or procedure. The record clearly establishes the nature and extent of appellant's misconduct. We now turn to the remaining issue raised by the appeal.

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

This board recently had the occasion to express itself on the seriousness of resetting odometer gauges with the intent to reduce the mileage indicated thereon. (Zar Motors vs. the Department of Motor Vehicles, A-17-71.) We said in that case:

"This board regards the manipulation of an odometer for the purpose of reducing the mileage indicated thereon as one of the most serious wrongs that a licensee or non-licensee can commit in the sale of an automobile. It is common knowledge that buyers of used vehicles rely on the odometer readings when deciding whether to buy a certain vehicle and at what price. Reducing the number of miles on the odometer is a fraudulent means of deceiving the buyer with respect to a material fact which he relies upon in making his decision.

"The practice of odometer tampering on the part of licensees is fraught with evils other than defrauding innocent purchasers. It severely tarnishes the image of all motor vehicle dealers, including those who do not resort to such fraudulent conduct, and gives the dishonest dealer an unfair business advantage over the ethical dealer in a business that is highly competitive. If such conduct were allowed to go unchecked by the licensing authority, it would have a highly corruptive effect upon the retail automobile industry."

The record before us abundantly establishes that appellant engaged in a course of fraudulent conduct designed to facilitate the sale of automobiles. Appellant's president, Mr. Earle A. Nesse, testified that he was aware that odometer manipulation was occurring at the dealership (R.T. 10, lines 2-3) and that such conduct was wrongful (R.T. 10, line 12). The subject of selling vehicles with high mileage was discussed in meetings with sales personnel and, while odometer manipulation was not specifically approved, it was

understood the dealership would do whatever it could to facilitate the sale of high mileage vehicles (R.T. 10, line 27 to R.T. 11, line 12).

While Mr. Nesse knew that it was wrong to manipulate odometers, he claimed he "...had never really given serious consideration to the implications of doing such a thing" (R.T. 10, lines 12-14).

We note in passing that the odometer manipulation on the part of appellant encompassed more than "high mileage" vehicles. According to Mr. Nesse, the acts occurred primarily on demonstrators (R.T. 20, lines 2-4). The odometers on demonstrators were reset so as to give the original retail buyer additional warranty coverage to which the buyer was not entitled (R.T. 23, lines 4-10). This, of course, perpetrates a fraud upon any subsequent purchaser as well as upon the franchisor, the Ford Motor Company. In its eagerness to sell automobiles, appellant's president and employees apparently gave no consideration to the harm arising from or made possible by their wrongful acts.

The fact that in this case some of the buyers conspired with appellant's employees to commit the unlawful acts, does not in the least excuse the wrongful conduct. Indeed, the existence of the conspiracy renders the conduct even more inimical to the public interest. It appears from the record before us that appellant's president and some of the buyers could very well have been successfully prosecuted for a felony under Penal Code Section 182.

One licensed by the State of California to conduct a business enterprise is under a high duty to avoid conduct of a fraudulent

nature in the pursuit of the licensed business. Appellant fell far short of meeting this standard. Appellant's conduct was such that we have concluded that the public welfare will be served only by revocation of its license.

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

The final order shall become effective March 30, 1972.

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PASCAL B. DILDAY

MELECIO H. JACABAN

ROBERT D. NESEN

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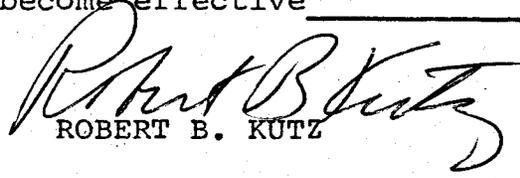
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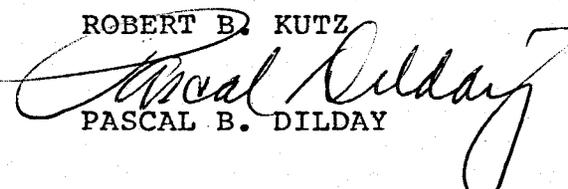
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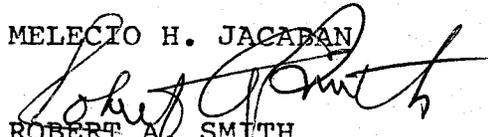
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