

2415 First Avenue  
P. O. Box 1828  
Sacramento, CA 95809  
(916) 445-1888

NEW CAR DEALERS POLICY AND APPEALS BOARD  
STATE OF CALIFORNIA

In the Matter of	)	
	)	
COBERLY FORD, a California	)	
Corporation,	)	
	)	
Appellant,	)	Appeal No. A-25-72
	)	
vs.	)	Filed: November 14, 1972
	)	
DEPARTMENT OF MOTOR VEHICLES,	)	
	)	
Respondent.	)	
<hr/>		

Time and Place of Hearing:

October 18, 1972, 10:15 a.m.  
City Council Chambers  
City Hall  
275 E. Olive  
Burbank, California

For Appellant:

George E. Leaver  
Attorney at Law  
Getz, Aikens & Manning  
5900 Wilshire Blvd., Suite 770  
Los Angeles, CA 90036

For Respondent:

Honorable Evelle J. Younger  
Attorney General  
By: Mark Levin  
Deputy Attorney General

FINAL ORDER

An appeal was taken to this board by Coberly Ford, herein-  
after referred to as "appellant", from a decision of the Director

of Motor Vehicles imposing a 20-day suspension, with 10 days of said suspension stayed, of appellant's dealer license and special plates and placing appellant on probation for a period of one year under the condition that appellant obey all laws governing its licensed business and the regulations of the Department of Motor Vehicles. Proceeding via the Administrative Procedure Act (Sections 11500 et seq. Government Code), the director found that appellant had: (1) violated Section 2982(a) Civil Code in seven instances by obtaining the signature of buyers of automobiles on conditional sale contracts which did not include in a single document all the agreements of the parties; (2) overcharged customers in 14 instances for registration and vehicle license fees; (3) failed in 61 instances to give timely written notice to the department after transferring an interest in certain motor vehicles; (4) failed in 1,369 instances to submit timely to the department reports of sale of used vehicles together with other documents and fees required to transfer registration of the vehicles; and (5) failed in 2,258 instances to submit timely to the department the application for registration of certain new vehicles together with other documents and fees required to register the vehicles.

The director found in mitigation that: (1) appellant had received the Ford Motor Company Dealer Customer Relation Award in his district for the past five years; (2) the persons in

charge of the management of sales during the 1968 through 1969 period had been terminated and appellant had replaced these persons as well as hiring an outside service to handle reporting matters to the Department of Motor Vehicles; (3) the overcharges of registration and vehicle license fees were all refunded by appellant or an attempt to refund was made; and (4) extreme measures were taken from April 1970 through November 1970 by appellant to clear up the delays in reporting to the department by hiring extra employees and retaining an outside service to work additional hours.

No question of law or fact being presented to us by this appeal, we direct our attention at once to the appropriateness of the penalty. Appellant urges that an actual ten-day cessation of buying and selling vehicles with a one-year probationary period is excessive.

At the outset, we direct our attention to the harm that can be visited upon automobile purchasers and the general public when a dealer fails to meet his statutory responsibilities concerning reporting to the Department of Motor Vehicles transfers of interests in motor vehicles and the registration of vehicles which the dealer sells. As far back as 1924, the California Supreme Court, in the case of Parke v. Franciscus, 194 Cal. 284, said:

"The nature of motor vehicle traffic requires that there be a more certain indicia of ownership than mere possession, for the protection of the general public in case of accidents or violations of the law and to prevent frauds upon innocent purchasers. In order to effect this purpose, registration and identification of motor vehicles is required. . . . The identity and ownership of cars operated upon the public ways is of concern to the state."

More recently, the same court, in the case of Henry v. General Forming, Ltd., 33 Cal. 2d 233, said:

"The requirements for registration of title and ownership, as indicated by the code provisions, were enacted in the interests of the public welfare to protect innocent purchasers and afford identification of vehicles to persons responsible in cases of accident and injury."

"These registration provisions derive their importance from the nature of motor vehicle traffic which requires that there be readily ascertainable indicia of ownership for protection of the general public in the case of accident and violation of the law." (Larson v. Burnett, 101 Cal.App.2d 282.) (See also Bunch v. Kin, 2 Cal.App. 81; Rainey v. Ross, 106 Cal.App.2d 286; Canadian Indemnity Co. v. Motors Insurance Co., 224 Cal.App.2d 8; and Somerville v. Providence Washington Indemnity Co., 218 Cal.App.2d 237.)

In Rainey v. Ross, supra, the court said:

"The [legislative] plan was evolved into a well-ordered system of motor vehicle title registration, and the regulation of ownership rights and duties upon the basis of such registration."

Reviewing some of the significant provisions of this legislative plan, we find that it commenced in 1905 when the legislature provided for registration of motor vehicles (Stats. 1905, Ch. 612). To assure that motor vehicle dealers met their

responsibilities, the California Vehicle Act of 1915 provided that the certificate and special plates issued a dealer could be revoked in the event there was failure of compliance with the requirements of the law with reference to notices of sale and reports of transfer of motor vehicles (Stats. 1915, Ch. 188).

By 1919, the plan had been enlarged to effect rights and liabilities relating to vehicle ownership through registration requirements (Stats. 1917, Ch. 218). In 1929, the owner's imputed liability statute was enacted (Stats. 1929, Ch. 261), and during 1931, the legislature added a provision requiring the owner to give the state immediate notice of the sale of a vehicle, and to permit him to avoid future responsibility under the imputed liabilities statute by delivering the vehicle and the certificate of ownership, properly endorsed, to the buyer (Stats. 1931, Ch. 1026).

This board has consistently taken the view that meeting such responsibilities as hereunder discussed is indispensable to the orderly management of documents related to the ownership of motor vehicles and that such management is a matter of importance to the public welfare. In *Bill Ellis v. the Department of Motor Vehicles*, A-2-69, we said:

"Timeliness and accuracy of reporting required data to respondent [Department of Motor Vehicles] is essential to the statutory duty of establishing and maintaining reliable records in determining fees due the state.

In the absence of timely and accurate reporting, the difficulty of determining civil and criminal liability arising out of ownership and operation of approximately 12,500,000 motor vehicles registered in California is greatly increased; the state's ability to accurately assess and collect fees is impaired and the rights of purchasers and others entitled to certificates of ownership and certificates of registration are placed in jeopardy."

In *Mission Pontiac v. Department of Motor Vehicles*, A-6-70, we rejected appellant's argument that the only party that could be injured by the failure of a dealer to comply with statutory requirements regarding transfer of title of vehicles would be the dealer himself. We pointed out that the relevant statutes were "...enacted for several reasons unrelated to insulating an automobile dealer from liability to the public as owner of a vehicle following the transfer of his interest of a motor vehicle to another."

The potential for buyer frustration, inconvenience and legal entanglement, both criminal and civil, that may arise from delinquent reporting to the Department of Motor Vehicles on the part of dealers is too obvious to require elaboration. Having a highly mobile, expensive and readily marketable item of property with no indicia of ownership other than mere possession is simply incompatible with sound business practices. The legislature and the Department of Motor Vehicles, the administrative agency vested with the duty of registering vehicles (14,444,245 vehicles in 1971), have taken steps to provide for

a workable means of recording interests in vehicles and enforcing such requirements.

While we believe that the majority of new car dealers in California make substantial efforts and are reasonably successful in meeting their reporting requirements, too many, unfortunately, treat their responsibilities in this regard casually. We cannot emphasize too strongly that the filing with the department of the notice of transfer of interest in a vehicle pursuant to Section 5901 Vehicle Code and the application for transfer of ownership of a used vehicle or the application for registration of a new vehicle pursuant to Section 4456 Vehicle Code has consequences reaching far beyond merely informing the department who owns, and to what extent, an interest in a vehicle. As can be ascertained from the cases before our appellate courts, such filing actually determines the rights and liabilities of owners. It should be obvious to all concerned that reporting to the department required information is not a task that may be regarded as unimportant and delegated to an employee with a minimum of supervision. It is a task that is deserving of a close degree of supervision by top management or the dealer himself.

Lest there be any question about whether the legislature views timely reporting as important, we point out, as we did

in Fletcher Chevrolet, A-4-69, that failure of a dealer to adhere to the requirements of Section 5901 Vehicle Code (notice of sale) makes the dealer subject to prosecution for committing a misdemeanor (Section 40000.7 Vehicle Code). Failure to adhere to the requirements of Section 4456 (reports of sale) subjects a dealer to infraction sanctions (Section 40000.1 Vehicle Code). Such fines and imprisonment can be imposed in addition to disciplinary action against the dealer's license. When one considers the several hazards a dealer exposes his business to, to say nothing of the welfare of his customers, when he fails to meet departmental reporting requirements, one wonders how a dealer can regard such requirements other than as the most important aspect of his business operation.

Turning to the case before us, we are met with a number of factors which, in our opinion, are truly of a mitigating nature. Factors in mitigation generally do not, in our view, in any way serve to justify or excuse a wrongful act or lessen the seriousness thereof (Richards v. Gordon, 254 Cal.App.2d 735); certainly a buyer who has suffered inconvenience, anxiety or adverse fiscal consequences as a result of a dealer's delinquency, is in no way compensated therefor or even comforted by the fact that, for example, the dealer, as here, won an award from his franchisor.

This is not to say that mitigating factors are not relevant in determining the appropriate administrative sanction to be imposed upon erring licensees. It is a well-established principle that administrative proceedings have as a primary purpose, not the punishment of the wrongdoer, but, the protection of the public (Ready v. Grady, 243 Cal.App.2d 113; Borrer v. Department of Investments, 15 Cal.App.3d 539; West Coast Home Improvement Company v. Contractors State License Board, 72 Cal.App.2d 287.) In the latter case, the court said, "... it [disciplinary proceeding] is not intended for the punishment of the individual contractor but for the protection of the contracting business as well as the public by removing, in proper cases, either permanently or temporarily, from the conduct of a contractor's business a licensee whose method of doing business indicates a lack of integrity upon his part or a tendency to impose upon those who do business with him." It follows that where, as here, the wrongful acts call for some administrative sanction short of license revocation, several factors require consideration when arriving at the appropriate discipline. These factors, in our opinion, include the extent that the discipline will serve notice to other licensees that violations of the laws governing the licensed business will not be condoned; the extent that the discipline will assure the public that the automobile retail business is deserving of

public confidence and the extent that the discipline will motivate the erring dealer to take steps to put his business in proper order and keep it in such order.

We note in the case before us that the review of appellant's dealership commenced during 1968 and the accusation filed February 28, 1970. The hearing consumed four days and spanned a period of nine months. The Director's Decision was not filed until February 16, 1972. Appellant timely filed its appeal with this board but, apparently, through no fault of its own, was unable to file the administrative record for nearly six months. We are aware that these unfortunate delays, whatever the reasons therefor, in bringing the case before us do not minimize the cumulative gravity of the offenses. But, we are of the firm opinion that one laboring for several years under the stress of potential license discipline should be sufficiently motivated to keep his business in order; an actual suspension, with its far-reaching economic consequences to innocent persons, is unnecessary under these circumstances. In fact, the record demonstrates that the filing of the accusation provided sufficient motivation for appellant to place his business in order and we do not believe that an actual suspension would add to such motivation.

The same factors motivating appellant to put and keep its business in a condition that meets statutory standards

should deter other dealers from falling into lackadaisical reporting practices. Certainly no man wants to operate his business under a Damocles sword. Further, we do not believe public confidence in the integrity of the automobile retail industry will in any way be diminished by an administrative order calling for less than an actual cessation of business activities. Public interest, which is of paramount importance in matters of this kind, will be adequately safeguarded by a suspended sentence coupled with a probationary period.

We have already alluded to another factor which militates towards no actual suspension in this case. This concerns appellant's reaction when made aware of its reporting deficiencies. In most cases coming before us on appeal, the accused dealer took some steps to correct those business malfunctions alleged in the accusation that the dealer did not deny. However, the record in this case amply demonstrates that the officers of appellant corporation, upon becoming aware of the trouble provoking areas, took sincere, immediate and effective steps to correct these practices which led to reporting deficiencies. Employees who could not do the job or had an inappropriate attitude toward abiding by statutory requirements were discharged. An outside firm specializing in Department of Motor Vehicles work was employed on a full-time basis and several employees

were assigned to appellant on a seven day per week basis. A business manager and an office manager of demonstrated competency were borrowed from another Ford agency. Appellant spent approximately \$50,000, excluding attorney fees and "misuse" fees, correcting reporting deficiencies. It is abundantly clear to us that appellant has focused the requisite degree of attention upon the reporting to the department aspect of its business and we believe that a one-year probationary period affords the department adequate time to determine whether or not appellant's corrective measures have produced the desired results. If, for whatever reason, the proper results are not being achieved, the Director of Motor Vehicles has the power to, and should, take more stringent action.

In the exercise of the authority vested in us by Section 3054 (f) Vehicle Code, we amend the Decision of the Director of Motor Vehicles to provide as follows:

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The dealer's license, certificate and special plates heretofore issued to appellant Coberly Ford, a California corporation, are hereby suspended for a period of twenty (20) days; provided, however, the entire twenty (20) days of said suspension is hereby stayed and appellant is placed on probation for a period of one (1) year under the following terms and conditions:

1. Appellant shall strictly comply with all of the provisions of the Vehicle Code and the regulations of the Department of Motor Vehicles governing dealers in motor vehicles in the State of California.

2. Appellant shall obey all laws of the United States and of the State of California and the political subdivisions thereof, and the rules and regulations of the Department of Motor Vehicles.

If, and in the event, the Director of Motor Vehicles should determine, after giving appellant notice and opportunity to be heard, that a violation of probation has occurred, the director may terminate the stay and impose the stayed suspension or otherwise modify the order.

In the event the appellant shall faithfully keep the terms of the conditions of probation imposed for the period of one (1) year, the stay shall become permanent and the appellant shall be restored to all of its license privileges.

This order shall become effective when served upon the parties.

AUDREY B. JONES

ROBERT B. KUTZ

GILBERT D. ASHCOM

PASCAL B. DILDAY

W. H. "HAL" McBRIDE

JOHN ONESIAN

ROBERT A. SMITH

A-25-72

1. Appellant shall strictly comply with all of the provisions of the Vehicle Code and the regulations of the Department of Motor Vehicles governing dealers in motor vehicles in the State of California.

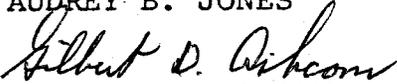
2. Appellant shall obey all laws of the United States and of the State of California and the political subdivisions thereof, and the rules and regulations of the Department of Motor Vehicles.

If, and in the event, the Director of Motor Vehicles should determine, after giving appellant notice and opportunity to be heard, that a violation of probation has occurred, the director may terminate the stay and impose the stayed suspension or otherwise modify the order.

In the event the appellant shall faithfully keep the terms of the conditions of probation imposed for the period of one (1) year, the stay shall become permanent and the appellant shall be restored to all of its license privileges.

This order shall become effective when served upon the parties.

AUDREY B. JONES

  
GILBERT D. ASHCOM

ROBERT B. KUTZ

PASCAL B. DILDAY

W. H. "HAL" McBRIDE

JOHN ONESIAN

JOHN A. SMITH

A-25-72

1. Appellant shall strictly comply with all of the provisions of the Vehicle Code and the regulations of the Department of Motor Vehicles governing dealers in motor vehicles in the State of California.

2. Appellant shall obey all laws of the United States and of the State of California and the political subdivisions thereof, and the rules and regulations of the Department of Motor Vehicles.

If, and in the event, the Director of Motor Vehicles should determine, after giving appellant notice and opportunity to be heard, that a violation of probation has occurred, the director may terminate the stay and impose the stayed suspension or otherwise modify the order.

In the event the appellant shall faithfully keep the terms of the conditions of probation imposed for the period of one (1) year, the stay shall become permanent and the appellant shall be restored to all of its license privileges.

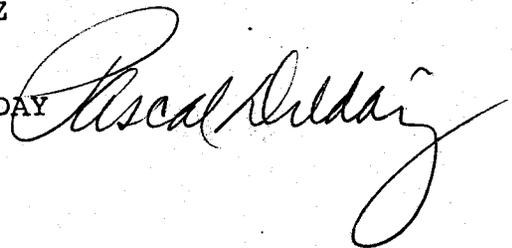
This order shall become effective when served upon the parties.

AUDREY B. JONES

ROBERT B. KUTZ

GILBERT D. ASHCOM

PASCAL B. DILDAY



W. H. "HAL" McBRIDE

JOHN ONESIAN

JOHN A. SMITH

A-25-72

1. Appellant shall strictly comply with all of the provisions of the Vehicle Code and the regulations of the Department of Motor Vehicles governing dealers in motor vehicles in the State of California.

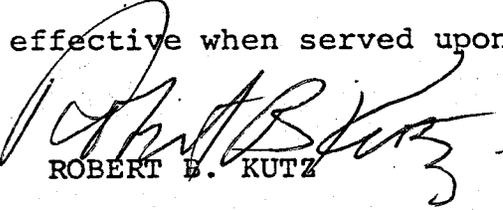
2. Appellant shall obey all laws of the United States and of the State of California and the political subdivisions thereof, and the rules and regulations of the Department of Motor Vehicles.

If, and in the event, the Director of Motor Vehicles should determine, after giving appellant notice and opportunity to be heard, that a violation of probation has occurred, the director may terminate the stay and impose the stayed suspension or otherwise modify the order.

In the event the appellant shall faithfully keep the terms of the conditions of probation imposed for the period of one (1) year, the stay shall become permanent and the appellant shall be restored to all of its license privileges.

This order shall become effective when served upon the parties.

AUDREY B. JONES

  
ROBERT B. KUTZ

GILBERT D. ASHCOM

PASCAL B. DILDAY

W. H. "HAL" McBRIDE

JOHN ONESIAN

JOHN A. SMITH

A-25-72

1. Appellant shall strictly comply with all of the provisions of the Vehicle Code and the regulations of the Department of Motor Vehicles governing dealers in motor vehicles in the State of California.

2. Appellant shall obey all laws of the United States and of the State of California and the political subdivisions thereof, and the rules and regulations of the Department of Motor Vehicles.

If, and in the event, the Director of Motor Vehicles should determine after giving appellant notice and opportunity to be heard, that a violation of probation has occurred, the director may terminate the stay and impose the stayed suspension or otherwise modify the order.

In the event the appellant shall faithfully keep the terms of the conditions of probation imposed for the period of one (1) year, the stay shall become permanent and the appellant shall be restored to all of its license privileges.

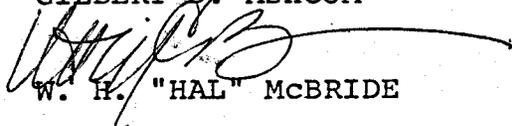
This order shall become effective when served upon the parties.

AUDREY B. JONES

ROBERT B. KUTZ

GILBERT D. ASHCOM

PASCAL B. DILDAY

  
W. H. "HAL" McBRIDE

JOHN ONESIAN

JOHN A. SMITH

A-25-72

1. Appellant shall strictly comply with all of the provisions of the Vehicle Code and the regulations of the Department of Motor Vehicles governing dealers in motor vehicles in the State of California.

2. Appellant shall obey all laws of the United States and of the State of California and the political subdivisions thereof, and the rules and regulations of the Department of Motor Vehicles.

If, and in the event, the Director of Motor Vehicles should determine, after giving appellant notice and opportunity to be heard, that a violation of probation has occurred, the director may terminate the stay and impose the stayed suspension or otherwise modify the order.

In the event the appellant shall faithfully keep the terms of the conditions of probation imposed for the period of one (1) year, the stay shall become permanent and the appellant shall be restored to all of its license privileges.

This order shall become effective when served upon the parties.

AUDREY B. JONES

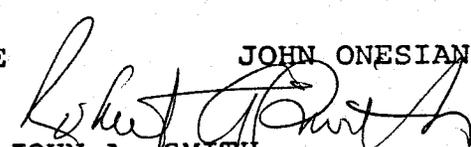
ROBERT B. KUTZ

GILBERT D. ASHCOM

PASCAL B. DILDAY

W. H. "HAL" McBRIDE

JOHN ONESIAN

  
JOHN A. SMITH

A-25-72

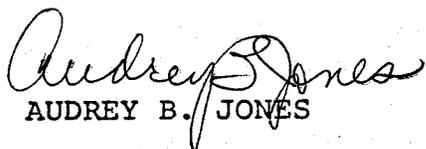
1. Appellant shall strictly comply with all of the provisions of the Vehicle Code and the regulations of the Department of Motor Vehicles governing dealers in motor vehicles in the State of California.

2. Appellant shall obey all laws of the United States and of the State of California and the political subdivisions thereof, and the rules and regulations of the Department of Motor Vehicles.

If, and in the event, the Director of Motor Vehicles should determine after giving appellant notice and opportunity to be heard, that a violation of probation has occurred, the director may terminate the stay and impose the stayed suspension or otherwise modify the order.

In the event the appellant shall faithfully keep the terms of the conditions of probation imposed for the period of one (1) year, the stay shall become permanent and the appellant shall be restored to all of its license privileges.

This order shall become effective when served upon the parties.

  
AUDREY B. JONES

ROBERT B. KUTZ

GILBERT D. ASHCOM

PASCAL B. DILDAY

W. H. "HAL" McBRIDE

JOHN ONESIAN

JOHN A. SMITH

A-25-72

1. Appellant shall strictly comply with all of the provisions of the Vehicle Code and the regulations of the Department of Motor Vehicles governing dealers in motor vehicles in the State of California.

2. Appellant shall obey all laws of the United States and of the State of California and the political subdivisions thereof, and the rules and regulations of the Department of Motor Vehicles.

If, and in the event, the Director of Motor Vehicles should determine after giving appellant notice and opportunity to be heard, that a violation of probation has occurred, the director may terminate the stay and impose the stayed suspension or otherwise modify the order.

In the event the appellant shall faithfully keep the terms of the conditions of probation imposed for the period of one (1) year, the stay shall become permanent and the appellant shall be restored to all of its license privileges.

This order shall become effective when served upon the parties.

AUDREY B. JONES

ROBERT B. KUTZ

GILBERT D. ASHCOM

PASCAL B. DILDAY

W. H. "HAL" McBRIDE

  
JOHN ONESIAN

JOHN A. SMITH

A-25-72