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NEW CAR DEALERS POLICY AND APPEALS BOARD

STATE OF CALIFORNIA

In the Matter of)	
)	
TOWN & COUNTRY BUICK, a)	
California Corporation,)	
)	
Appellant,)	Appeal No. A-26-72
)	
v.)	Filed: August 15, 1972
)	
DEPARTMENT OF MOTOR VEHICLES,)	
)	
Respondent.)	

Time and Place of Hearing: July 19, 1972, 1:30 p.m.
City Council Chambers
City Hall
625 E. Santa Clara Street
Ventura, California

For Appellant: George E. Leaver
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

The appropriateness of the penalty imposed by the Director of Motor Vehicles is the only issue this appeal presents for our consideration.

Proceeding via the Administrative Procedure Act (Section 11500 et seq. Government Code), the director found that Town & Country Buick, Inc., hereinafter referred to as "appellant", had: (1) included in the selling price of motor vehicles in four instances a cost for registration and license fees in excess of the fees due and paid to the State; (2) hired an unlicensed salesman for a period of approximately one week; and (3) disconnected odometers on five vehicles in order to reduce the mileage on the odometer gauges.

The director imposed a penalty of two five-day suspensions stayed for a period of one year for the violations involving overcharging of fees and hiring an unlicensed salesman. A period of 25 days' suspension was imposed for the violations involving the disconnecting of odometers, however, 15 of the 25 days were stayed for a period of one year. All suspensions were ordered to run concurrently. Thus, appellant is required to cease the business of buying and selling automobiles for a period of 10 days and, after the expiration thereof, appellant would be on probation for a period of one year on the condition that it strictly comply with all of the provisions of the Vehicle Code and all relevant regulations of the Department of Motor Vehicles.

We are requested by appellant to stay the entire suspension, thereby, allowing it to continue uninterrupted the business of buying and selling motor vehicles.

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

We need not detail our position with reference to odometer-tampering on the part of a seller of an automobile; suffice it to repeat a brief statement we have previously made. "...[T]he manipulation of an odometer for the purpose of reducing the mileage indicated thereon is one of the most serious wrongs that a licensee or non-licensee can commit in the sale of an automobile." (Zar Motors v. Department of Motor Vehicles, A-17-71; Chase Nesse Auto, Inc., v. Department of Motor Vehicles, A-18-71; Rich Motor Co. v. Department of Motor Vehicles, A-16-71.)

We reject appellant's argument that reduction of the penalty is in order because three of the five odometer violations involved disconnecting in connection with dealer-trades. While this practice was legal from November 1968 to November 1969, pursuant to Section 28051 Vehicle Code as it read during that period, the Legislature made it abundantly clear that such practice would no longer be lawful after November 1969. Appellant exposed its license to discipline when it elected to ignore the legislative mandate; to grant

it any relief on the grounds that the unlawful acts at one time were lawful would be incompatible with the public welfare.

The odometer on another vehicle was disconnected when a salesman took the vehicle to the drag race for display purposes. Apparently the disconnecting occurred without the knowledge or consent of any of appellant's officers. We draw an inference that the dealership was so infected with the practice of odometer disconnecting that a statement of appellant's sales manager, Roy Apple, to the salesman that the latter was not to put too many miles on the vehicle (A.T. 46:21)^{1/} was reasonably interpreted by the salesman as authorization to disconnect the odometer.

With reference to the vehicle operated by appellant's business manager, hereinafter referred to as the "Farquer vehicle", appellant's president had the odometer disconnected when the business manager decided to buy the vehicle. This was, of course, a flagrant violation of the law and further evidence of appellant's disregard for the laws governing its privileges as a licensee and its disregard of business ethics.

1/ "A.T." refers to the transcript of the proceedings before an officer of the Office of Administrative Hearings. The numbers refer to the corresponding page and line numbers in the transcript.

Appellant contends its purpose in disconnecting odometers "...is to give the customer the maximum mileage on his warranty." (A.T. 19:10-15.) We are unimpressed with the "saving the warranty" argument for three reasons. One, the controlling statutes (Sections 11713(n) and 28051 Vehicle Code) do not authorize a dealer to display such altruism. Two, "saving the warranty" by this means can perpetrate a fraud upon the warrantor and does so upon subsequent buyers. Three, the argument is based upon a false premise; i. e., no warranty is saved because Section 28052 Vehicle Code, which became effective November 10, 1969, provides that the warranty does not commence to run, as far as mileage is concerned, until the vehicle is sold as new to the purchaser.

We are also unimpressed with appellant's disclosure to buyers the fact that the odometer reading did not reflect true mileage. Buyers of the vehicles were peculiarly at the mercy of appellant in this regard; they had no way of verifying the mileage driven with the odometer disconnected. It may have been the policy of the dealership to reconnect the odometers at the time the dealer-traded vehicles arrived at appellant's place of business, but this policy was not always

followed as evidenced by the fact that departmental investigators found vehicles at appellant's established place of business with disconnected odometers. Furthermore, subsequent purchasers are harmed because it is unlikely that the first purchaser will disclose to subsequent purchasers the correct mileage.

The record abundantly demonstrates that appellant abused its privilege of buying and selling automobiles and it fully supports the penalty as fixed by the Director of Motor Vehicles. We, therefore, affirm the decision of the Director of Motor Vehicles in its entirety.

This Final Order shall become effective August 30, 1972.

AUDREY B. JONES

ROBERT B. KUTZ

GILBERT D. ASHCOM

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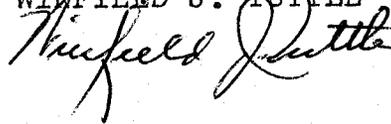
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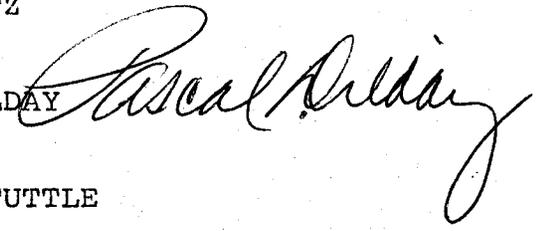
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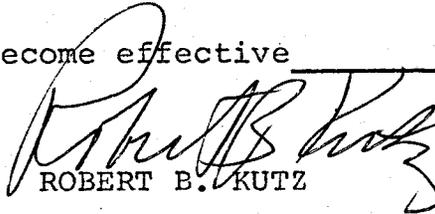


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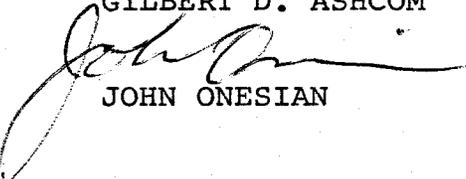
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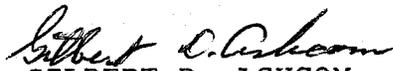
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