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NEW CAR DEALERS POLICY AND APPEALS BOARD  
STATE OF CALIFORNIA

In the Matter of )  
)  
PARK MOTORS, INC., a )  
California Corporation, )  
)  
Appellant, ) Appeal No. A-27-72  
)  
v. ) Filed: October 13, 1972  
)  
DEPARTMENT OF MOTOR VEHICLES, )  
)  
Respondent. )  
\_\_\_\_\_ )

Time and Place of Hearing: September 13, 1972, 1:00 p.m.  
Director's Conference Room  
Department of Motor Vehicles  
2415 First Avenue  
Sacramento, California

For Appellant: Harold C. Wright  
Brown & Wright  
Stanford Financial Square  
2600 El Camino Real, Suite 411  
Palo Alto, CA 94306

For Respondent: R. R. Rauschert, Legal Adviser  
Department of Motor Vehicles  
By: Alan Mateer  
Staff Counsel

FINAL ORDER

This is an appeal from a decision of the Director of Motor  
Vehicles wherein it was found that Park Motors, Inc., hereinafter

referred to as "appellant" had: (1) in three instances failed to file with the Department of Motor Vehicles, hereinafter referred to as "respondent", written notices of the transfer of interest in certain motor vehicles within the time allowed by law; (2) wrongfully and unlawfully failed in two instances to mail or deliver to respondent the report of sale of used vehicles together with such other documents and fees required to transfer the registration of the vehicles within the time allowed by law; (3) wrongfully and unlawfully failed in three instances to mail or deliver to respondent the application for registration of new motor vehicles together with other documents and fees required to register the vehicles within the time allowed by law; (4) 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 in the application for registration of the vehicle; (5) in 85 instances included as an added cost to the selling price of vehicles, registration fees in excess of the fees due and payable to the state; (6) unlawfully permitted customers in two instances to operate a motor vehicle on the highways while displaying dealers' special plates; (7) disconnected, turned back or reset the odometers in order to reduce the mileage thereon on two automobiles; (8) employed a person as a vehicle salesman when that person was not licensed as a

salesman; (9) failed in one instance to have posted in a conspicuous place on the premises the dealer's license; and (10) caused to be published in three instances advertising which was misleading and inaccurate in material particulars.

In mitigation of the wrongful conduct concerning the overcharges for vehicle license fees, the director found that appellant had made refunds except in those few instances when mail was returned although appellant was "quite slow" in making the refunds. The director expressly rejected the explanation of appellant's president that he was awaiting approval of the department before making restitution. The director also found that appellant frequently undercharged customers for vehicle license fees and that appellant had instituted controls designed to prevent a recurrence of overcharges.

The Order of the Director of Motor Vehicles provides for a stayed revocation while appellant serves a three-year probationary period. The conditions of probation require appellant to cease the business of buying and selling vehicles for a period of thirty days.

The appeal calls for this board to determine whether or not the findings are supported by the weight of the evidence in light of the whole record reviewed in its entirety; whether or not the department has proceeded in a manner contrary to law and whether or not the order imposed by the director is

commensurate with the findings.

#### THE FINDINGS

At the outset, we remark that Section 3054, subsection (e), requires us to use the independent judgment rule when reviewing the evidence. Pursuant to this rule, we are called upon to resolve conflicts in the evidence in our own minds, draw such inferences as we believe to be reasonable and make our own determination regarding the credibility of witnesses' testimony in the transcript of the administrative proceedings. (Holiday Ford v. Department of Motor Vehicles, A-1-69; Weber and Cooper v. Department of Motor Vehicles, A-20-71.)

Applying the weight of the evidence rule, we do not find sufficient support for the Director's Finding X (operation of the Van Duzer vehicle on special plates); Finding XIII (employing one as a vehicle salesman who was not so licensed); Finding XIV (failing to post in a conspicuous place the dealer's license); Finding XVI (advertising incorrect year model of a vehicle); or Finding XVII (advertising incorrect license number of a vehicle.)

With reference to the operation of the Van Duzer vehicle on special plates, respondent argues that 13 Ops.Cal.Atty. Gen. 161 sets forth the controlling law on the matter. We agree. That opinion concludes that the law authorizes a

dealer to permit a prospective customer to drive a vehicle for demonstration purposes without being accompanied by a representative of the dealer "...only so far as is necessary to make a proper demonstration of the vehicle." Under the facts surrounding the sale of the vehicle by appellant to Ruth Van Duzer, we do not believe there was any breach of the law as interpreted by the Attorney General with reference to the use of the dealer plates. The actual sale of the vehicle to Van Duzer did not occur until September 10, 1969, which was the same date that the dealer plates were removed from the vehicle.

The undisputed evidence shows that the vehicle had been in a major accident and had undergone extensive repairs prior to its being sold to Van Duzer. Appellant's president, Ray Bowen, went to substantial lengths to ascertain that Van Duzer would be satisfied with the vehicle and permitted her to operate it for demonstration purposes from August 17, 1969, to September 10, 1969. We do not believe it unreasonable for a dealer to permit a vehicle to be used by a customer for demonstration purposes for nearly four weeks under the facts in the Van Duzer transaction.

In our view, the evidence preponderates against the finding that appellant hired Jack Fiddler, an unlicensed person, as a vehicle salesman, notwithstanding the broad

definition of vehicle salesman under Vehicle Code Section 675. There is no doubt that Fiddler acted during the relevant time as appellant's business manager but this, in and of itself, did not place him in the position of exercising managerial control over appellant's business or in a position of supervising appellant's vehicle salesmen. The evidence preponderates to the view that Fiddler's primary responsibility was tending to appellant's fiscal affairs.

With regard to the director's finding that appellant failed, from November 29, 1969, to December 5, 1969, to have its dealer's license posted in a conspicuous place, the evidence established only that one of respondent's investigators observed, on each of the two dates mentioned, that the license was contained in a picture frame which was "...hanging down on the top of a cabinet in the firm's office..." Appellant produced evidence to show that it had reason to remove the picture frame from its usual place on the wall on both November 29 and December 5, 1969. A witness called by appellant recalled that the license was "reposed" between the dates observed by the investigator. Respondent produced no evidence to show that the license was not conspicuously posted between those dates. We find that the weight of the evidence establishes that the dealer's license was properly posted.

With reference to the finding that appellant advertised a 1967 Peugeot and a 1968 Plymouth in a newspaper in a misleading and inaccurate manner, in our view the inaccuracies resulted from mere unintentional errors on the part of either the appellant or the publisher of the newspaper containing the advertisements and do not provide a basis for license discipline.

Accordingly, Findings of Fact X, XIII, XIV, XVI and XVII and Determination of Issues 6, 10, 11 and that portion of 12 that relates to Findings of Fact XVI and XVII are reversed. The remaining Findings of Fact are affirmed.

#### THE LAW

Appellant argues that the hearing officer and the director misunderstood the law applicable to the facts surrounding the two instances of odometer tampering. Appellant contends that the odometers on the Thornton and Hager vehicles were defective, and the reduced mileage thereon resulted only from odometer replacement. If we believed these to be the facts, we would concur with appellant's statement that respondent misapplied the law as it existed at the relevant time. However, we concur with the director's rejection of appellant's contention that the odometers were replaced to correct a defective condition. Section 2805.1

subsection (d) Vehicle Code <sup>1/</sup> is inapplicable.

Finding no error elsewhere in respondent's interpretation or application of the law, we affirm Determination of Issues 1 through 5, 7 through 9, and 11 as it relates to Finding of Fact XV.

#### THE ORDER

We are of the opinion that the order made by the Director of Motor Vehicles for those Findings of Fact and Determination of Issues which we have affirmed is commensurate with such findings and determinations. To impose a lesser sanction would be incompatible with the interests of the public and the automobile retail industry.

Accordingly, the Order of the Director of Motor Vehicles is amended as follows:

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The dealer's license, certificate and special plates (D-4227) heretofore issued to appellant, Park Motors, Inc., are, and each is hereby, revoked; provided, however, that the effectiveness of said order of revocation shall be

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<sup>1/</sup> Section 2805.1, at the time relevant to these proceedings, provided that it was not unlawful for any person to disconnect, turn back or reset an odometer with the intent to reduce the number of miles indicated thereon when, among other things, there was a "replacement of a damaged or broken speedometer with a new speedometer when the odometer on the new speedometer registers '0' miles."

stayed for a period of three (3) years from the effective date of this decision, during which time the appellant shall be placed on probation to the Director of Motor Vehicles of the State of California upon the following terms and conditions:

1. The dealer's license, certificate and special plates (D-4227) heretofore issued to appellant, Park Motors, Inc., are suspended for a period of ten (10) days on each cause of disciplinary action described in Determination of Issues paragraphs 1, 2, 3, 7, and that part of 12 which relates to Findings of Fact XVI and XVII, considered separately and independently, but the said suspensions shall run concurrently.

2. The dealer's license, certificate and special plates (D-4227) heretofore issued to appellant Park Motors, Inc., are suspended for a period of twenty (20) days on each cause for disciplinary action described in paragraphs 4 and 5, Determination of Issues above, considered separately and independently, and said suspensions shall run concurrently with each other but consecutively with the suspensions imposed by paragraph 1 of this ORDER for a total suspension of thirty (30) days.

3. The dealer's license, certificate and special

plates (D-4227) heretofore issued to appellant, Park Motors, Inc., are suspended for a period of thirty (30) days on each cause for disciplinary action described in paragraphs 8 and 9, Determination of Issues above, considered separately and independently, and said suspensions shall run concurrently with each other and with the suspensions imposed by paragraphs 1 and 2 of this ORDER for a total suspension of thirty (30) days.

4. Appellant shall obey all of the laws of the State of California and all rules and regulations of the Department of Motor Vehicles governing the exercise of its privileges as a licensee.

5. If appellant is convicted of a crime, including a conviction after a plea of not guilty or nolo contendere, such conviction shall be considered a violation of the terms and conditions of the probation imposed herein.

If and in the event that the Director of Motor Vehicles shall 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 revocation or otherwise modify this order. In the event that appellant faithfully keeps the terms of the conditions imposed for the period of three (3) years, the stay shall become permanent and the respondent shall be fully restored to all of its license privileges.

This FINAL ORDER shall become effective November 1, 1972 .

AUDREY B. JONES

ROBERT B. KUTZ

GILBERT D. ASHCOM

MELECIO H. JACABAN

W. H. "HAL" McBRIDE

ROBERT A. SMITH

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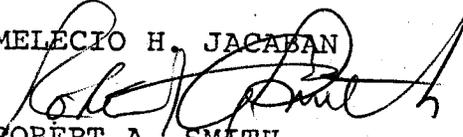
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*Audrey B Jones*  
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