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NEW CAR DEALERS POLICY AND APPEALS BOARD

STATE OF CALIFORNIA

In the Matter of )  
)  
MONDAY INVESTMENTS, INC., dba )  
DON MONDAY BUICK, )  
A California Corporation, )  
)  
Appellant, ) Appeal No. A-29-72  
)  
v. ) Filed: March 13, 1973  
)  
DEPARTMENT OF MOTOR VEHICLES, )  
)  
Respondent. )

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Time and Place of Hearing: February 7, 1973 - 10:30 a.m.  
Room 1122, State Building  
107 South Broadway  
Los Angeles, CA

For Appellant: DeWitt Blase  
Heily, Blase, Ellison &  
Muegenburg  
Attorneys at Law  
220 South A Street  
Oxnard, CA 93030

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

FINAL ORDER

Don Monday Buick, hereinafter referred to as "appellant",  
appealed to this board from a decision of the Director of Motor

Vehicles imposing a suspension of appellant's license for 30 days, with 25 days stayed for a period of three years, during which time appellant would be on probation subject to the condition that it obey all laws and all rules and regulations of the Department of Motor Vehicles pertaining to the exercise of the licensed privilege.

The case is before us on a STIPULATION IN LIEU OF ADMINISTRATIVE RECORD. Paragraph 3 of the stipulation recites as follows:

"That on October 29, 1970, in the Superior Court, County of Ventura, State of California, Donald L. Monday entered a plea of nolo contendere to a violation of Section 182.1 of the Penal Code charging that he unlawfully agreed and conspired to violate Section 28051 of the California Vehicle Code which offense was declared to be a misdemeanor by Judge Edwin F. Beach on December 3, 1970. A copy of the minute order of the Superior Court dated December 3, 1970, is attached hereto as Exhibit "A"."

It was stipulated that the only evidence introduced at the hearing by the Department of Motor Vehicles to support its contention that grounds exist for license discipline was the judgment of conviction.

The first of the three questions presented for our consideration is:

DOES CONVICTION, UPON THE ENTRY OF A NOLO CONTENDRE PLEA TO THE CHARGE OF CONSPIRING TO DISCONNECT, TURN BACK OR RESET THE ODOMETER OF A MOTOR VEHICLE WITH THE INTENT TO REDUCE THE NUMBER OF MILES INDICATED THEREON, A VIOLATION OF SECTION 182.1 PENAL CODE, CONSTITUTE A CONVICTION WITHIN THE MEANING OF SECTION 11705 VEHICLE CODE? 1/

Appellant contends that the nolo contendere provision of Section 11703 pertains only to refusals to issue a new license and does not apply to an accusation against an existing licensee. Appellant points out that Section 11703 contains several grounds for license refusal and provides, among other things, that a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of Section 11703. Section 11705 contains a number of bases for suspension or revocation of an existing license. Section 11705 was amended in 1965 to provide: "Any of the causes specified in Section 11703 as a cause for refusal to issue a license and certificate to a transporter, manufacturer or dealer applicant, shall be cause, after notice and hearing, to suspend or refuse to renew a license and certificate to a transporter or dealer." Appellant directs our attention to the fact that Section 11705 was not amended in 1968, as was Section 11703, to add the language which provides that a conviction upon a nolo contendere plea is to be deemed a conviction within the meaning of that section. Appellant states:

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1/ All sections will reference the Vehicle Code unless otherwise indicated.

"The question, therefore, becomes one of whether the 1968 added language in Section 11703 pertaining to nolo contendere pleas was incorporated into Section 11705 by virtue of the 1965 amendment to Section 11705 previously quoted." Unlike appellant, we answer this question in the affirmative.

We initially observe that the purpose of the legislative scheme for licensing vehicle dealers (Article 1, Chapter 4, Division 5, Vehicle Code) is to protect the public from "...unscrupulous and irresponsible persons in the sale of vehicles subject to registration under the code [Vehicle]..." (Merrill v. Department of Motor Vehicles, 71 Cal.2d 907.) We further observe that, "Statutes on the same subject matter must be construed together in the light of each other so as to harmonize them if possible, although they were passed at different times, and although one deals specifically and in greater detail with the subject than does the other." (45 Cal. Jur.2d 629, Statutes §121.)

As the statutes read at the relevant time, Section 11703 provided cause for license refusal and also provided that a nolo contendere plea was to be deemed a conviction within the meaning of that section. Section 11705 provided bases for license discipline. Section 11703.1 provided that bases for license discipline specified in Section 11705 were also bases for license refusal. Section 11705, subsection (d), provided

that bases for license refusal specified in Section 11703 were bases for disciplining an existing license. Thus, it is clearly apparent that the Legislature intended, insofar as possible, that acts or omissions providing a basis for license refusal would also provide basis for disciplining an existing license. Conversely, those acts or omissions providing basis for disciplining an existing license should also provide basis for license refusal.

When the Legislature amended Section 11703 in 1968 to include the nolo contendere provision, it did not make the same amendment to Section 11705 because of the cross-reference amendment of Section 11705 in 1965. Amending the latter section would have been an idle act.

We have no quarrel with appellant's assertion that greater legal safeguards are afforded one facing discipline of an existing license than one applying for a license. "The opportunity to continue in a trade or profession is more zealously guarded than the opportunity for entrance to it." (D'Amico v. Board of Medical Examiners, 29 Cal.App.3d 224.) But, as we have previously indicated, a reading of the relevant statutes abundantly demonstrates to us that the Legislature did not intend that an existing license be protected by a nolo contendere plea on the part of its holder.

Quite aside from statutory language, we can find no rational

basis for distinguishing between a license refusal and license discipline as far as a nolo contendere plea is concerned. Such a plea to a wrongful act, being sufficient to prevent one from engaging in a lawful business, should be sufficient basis for disciplining an existing license. The need for public protection from the erring licensee is certainly as great as the need for protection from one failing to meet licensing standards.

IS CONVICTION OF THE CRIME OF CONSPIRACY TO DISCONNECT, TURN BACK OR RESET AN ODOMETER WITH THE INTENT TO REDUCE THE MILEAGE INDICATED THEREON, CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE?

We are not dealing in the abstract in answering this question as appellant would urge. Here we have a conviction of a licensee of this state, privileged to buy and sell motor vehicles from and to members of the public, a position of trust and confidence.

Don Monday, appellant's president, pled nolo contendere to the charge of conspiring to violate Section 28051.<sup>2/</sup> No evidence of other wrongdoing was introduced by the department to support its charge that appellant had been guilty of acts or omissions constituting grounds for license discipline. However, there is other evidence before us, namely that appellant is a licensed vehicle dealer engaged in the business of retail sale of

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2/ Section 28051: "It is unlawful for any person to disconnect, turn back, or reset the odometer of any motor vehicle with the intent to reduce the number of miles indicated on the odometer gauge."

automobiles to the public.

Appellant argues that a conspiracy to tamper with an odometer, standing alone, is not necessarily a crime involving moral turpitude. Appellant concedes that such a conspiracy could involve moral turpitude but contends that facts beyond a conviction upon nolo contendere plea must be shown in order to support a finding of moral turpitude.

The cases are legion in pronouncing the rule that moral turpitude is "everything done contrary to justice, honesty, modesty or good morals." (In re McAllister, 14 Cal.2d 606; Bryant v. State Bar of California, 21 Cal.2d 295; Stanford v. State Bar of California, 15 Cal.2d 721; Wallace v. State Bar, 21 Cal.2d 322; Otash v. Bureau of Private Investigators, 230 Cal.App.2d 568; In re Hallinan, 43 Cal.2d 243.) Hallinan holds that an attorney could be ". . . summarily disbarred . . . without giving him further notice or hearing . . ." only when he is convicted of a crime ". . . the commission of which would in every case evidence a bad moral character . . ." and that an attorney cannot be summarily disbarred after conviction of a crime "...the minimum elements of which do not involve moral turpitude..." because to hold otherwise would deprive him of ever having "...an opportunity to be heard on the issue on which his disbarment depends." We are not faced with that

question here, of course, because appellant has been heard. He failed to produce any evidence tending to dispel the inference of moral turpitude which arose from the evidence. In 48 Cal.2d 52, after being afforded an opportunity to be heard, Hallinan was suspended from practice for three years because of his conviction of income tax fraud.

If an offense involves moral turpitude, the same stigma attaches to a conspiracy having that offense as its object. (6 Cal.Jur.2d Rev. 239, Attorneys at Law §156.)

We believe that the evidence in the administrative record is sufficient to support an inference that a licensed automobile dealer who entered into an unlawful agreement with another to reduce the number of miles registered on the odometer did so intending to deceive prospective automobile buyers and, therefore, committed an offense involving moral turpitude.

An inference is, "A deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action." (Evidence Code 600(b).) An inference must be a reasonable deduction from the facts proved. (Braycovich's Estate, 153 Cal.App.2d 505; Cothran v. Town Council of Los Gatos, 209 Cal.App.2d 647.)

We believe it is more likely true than not that a licensed automobile dealer would not unlawfully enter into an agreement to tamper with an odometer unless he thought such

an act would increase the current value of a vehicle or facilitate its sale. Misrepresenting the odometer reading to a prospective customer, or agreeing to a scheme to do so is clearly contrary to honesty and good morals. There may be situations wherein a person could violate Section 28051 without tainting himself with moral turpitude. But where, as here, the person is a licensed dealer, subject to license discipline for violation of Section 28051 (as provided in subsection (n) of Section 11713 and subsection (g) of Section 11705), pleads no contest to this criminal charge, we believe that he unlawfully conspired to tamper with the odometer with the purpose of misrepresenting the mileage on the vehicle to a prospective purchaser.

Perhaps, conflicting inferences could be drawn from the facts presented by the stipulation. The Director of Motor Vehicles inferred that the agreement entered into by appellant's president constituted a crime involving moral turpitude. We believe such inference to be supported by the evidence and consistent with human experience and reason. We now direct our attention to the last issue raised by this appeal.

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

We have voiced on numerous occasions our opinion that:  
"The 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." (Rich Motor Company v. Department of Motor Vehicles, A-16-71; Zar Motors v. Department of Motor Vehicles, A-17-71; Chase Nesse Auto, Inc. v. Department of Motor Vehicles, A-18-71.) In Zar we pointed out that odometer tampering deceives automobile purchasers and 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. In Chase Nesse Auto, we pointed out that turning back the odometer on vehicles still covered by the manufacturer's warranty perpetrates a fraud upon the warrantor.

To add to what we have said, we point to an expression of Congress on the matter of odometer manipulation. In Section 401 of the "Motor Vehicle Information and Cost Savings Act", it is recited:

"The Congress hereby finds that purchasers, when buying motor vehicles, rely heavily on the odometer reading as an index of the condition and value of such vehicle; that purchasers are entitled to rely on the odometer reading as an accurate reflection of the mileage actually traveled by the vehicle; that an accurate indication of the mileage traveled by a motor vehicle assists the purchaser in determining its safety and reliability; and that motor vehicles move in the current of interstate and foreign commerce or affect such commerce. It is therefore the purpose of this title to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers."

In view of the effort of the people of this state and nation, as evidenced by the enactments of their elected representatives, to eliminate the odious practice of odometer tampering, one wonders how an automobile dealer engaging in such conduct can expect the state to permit him to continue in motor vehicle commerce.

The penalty imposed by the Director of Motor Vehicles is commensurate with the facts of the case, including those stipulated to by the parties going to mitigation of penalty, and, therefore, we affirm the Director's Decision in its entirety.

This Final Order shall become effective March 29, 1973.

GILBERT D. ASHCOM

PASCAL B. DILDAY

AUDREY B. JONES

ROBERT B. KUTZ

JOHN ONESIAN

ROBERT A. SMITH

WINFIELD J. TUTTLE

A-29-72

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Audrey Jones

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*Gilbert D. Ashcom*

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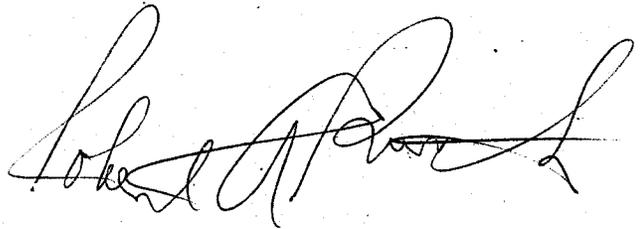
This Final Order shall become effective \_\_\_\_\_.

A handwritten signature in cursive script, appearing to read "John Doe", written in dark ink.

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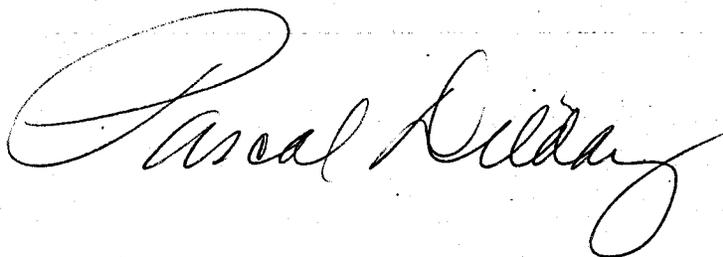
This Final Order shall become effective \_\_\_\_\_.

A handwritten signature in cursive script, appearing to read "Robert A. [unclear]".

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A handwritten signature in cursive script, appearing to read "Pascal Kelly". The signature is written in dark ink and is centered on the page.

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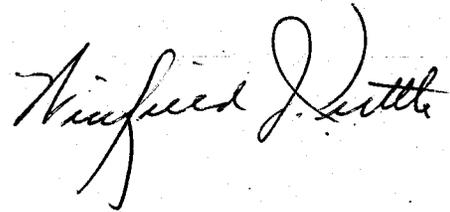
This Final Order shall become effective \_\_\_\_\_.

A handwritten signature in cursive script, appearing to read "Robert B. Katz". The signature is written in dark ink and is positioned to the right of the signature line in the text above.

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A handwritten signature in cursive script, reading "Winfield J. Little". The signature is written in dark ink and is positioned in the lower right quadrant of the page.