

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

STATE OF CALIFORNIA

NEW CAR DEALERS POLICY & APPEALS BOARD

In the Matter of)
)
WILLIAMS CHEVROLET, INC.,)
A California corporation,)
)
Appellant,) Appeal No. A-32-72(2)
)
vs.) Filed: September 5, 1973
)
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)
)
Respondent.)
_____)

Time and Place of Hearing: August 8, 1973 - 11:00 a.m.
Auditorium, DMV
2570 - 24th Street
Sacramento, CA 95818

For Appellant: B. W. Minsky
Attorney at Law
Minsky, Garber & Rudof
Suite 810, Wm. Fox Building
608 South Hill Street
Los Angeles, CA 90014

For Respondent: R. R. Rauschert, Legal Adviser
Department of Motor Vehicles
By: Richard E. Lehmann
Staff Counsel

FINAL ORDER

Williams Chevrolet, Inc., "appellant", appealed to this board from an "Order Refixing Penalty" by the Director of Motor Vehicles.

This matter is before us on appeal for a second time after a full review of the case on its merits and in which all issues of law and fact raised by the former appeal were fully considered and duly disposed of. See our order in the case of Williams Chevrolet, Inc., vs. Department of Motor Vehicles, Appeal No. A-32-72, filed April 26, 1973.

In that order, having found error of law with reference to Items 10 and 24 of Paragraph XII of the Director's Decision, insufficient evidence to support Paragraph XV of the Director's Decision and, being unable to determine whether the surplus language which we directed stricken from Finding XVII was considered by the director to the prejudice of appellant in determining the penalty, we remanded the matter to the director pursuant to Section 3056 Vehicle Code for refixing of penalty not inconsistent with our order.

Pursuant to the mandate of this board and duly considering our action, the director, on May 10, 1973, promulgated his "Order Refixing Penalty" which imposes the same penalty as contained in his previous order of October 24, 1972, and provides for revocation of the corporate license with a stay for a period of six months in order to permit the stockholders

to transfer their stock to a person or persons acceptable to the Department of Motor Vehicles. The order further permits the director to extend the six-month period for an additional six months, if in his discretion the director determines that a good faith offer is being made to effect a transfer of the stock, but such transfer has not yet been achieved.

The present appeal is predicated on the contention that, in the circumstances of this case, the penalty ordered is "extremely harsh" and that "it is tantamount to a final revocation". We pause at this point to observe that the department in argument before the board in this appeal concurred with appellant's position that the penalty of the director is, in fact, an order revoking the corporate license and that the stay is merely to provide time for liquidation of the dealership.

In support of its present contention, appellant argues, in essence, that most of the violations occurred in the latter part of 1969 and early in 1970; that prior thereto, it had never been the subject of any disciplinary proceedings; that its activities were neither flagrant nor intentional; that most of the items arose because of oversight and employee errors; and that many of the violations were "somewhat technical" in nature. Appellant further argues

that it should be given the opportunity of proving it can operate within the laws and regulations of the State of California and the Department of Motor Vehicles in the operation of its business, having demonstrated its ability to do so in the last two years. Inferentially, appellant alludes to error by the director in the "Order Refixing Penalty" as it provides for the same penalty imposed prior to the board's remand. Appellant in his brief also argues that it is an abuse of discretion by an administrative agency, such as the department, to invoke the maximum penalty of revocation of a license on a first offense (citing Magit vs. Board of Medical Examiners, 57 Cal.2d 74-87; O'Reilly vs. Board of Medical Examiners, 66 Cal.2d 381-389; Bonham vs. McConnell, 45 Cal.2d 304; and Cooper v. State Board of Medical Examiners, 35 Cal.2d 24, P.2d 630).

We will first address the latter two areas of concern raised by the appellant before discussing the appropriateness of the penalty.

To dispel any inference that the director did not comply with the mandate of the board because there was no resultant change in penalty, we need only look to the language of the "Order Refixing Penalty". In his order, the director, after setting forth with specificity each of the board's actions with respect to the findings reversed or modified, states, "I have reevaluated the penalty in the light of these changes..."

This language indicates without equivocation that the director complied with the mandate of the board, pursuant to Section 3050 Vehicle Code, and duly reconsidered the penalty. The fact that the director found the penalty previously imposed nonetheless commensurate with the findings as affirmed by the board and re-fixed the penalty without change in no way disparages this conclusion.

Any contention by appellant, direct or indirect, that the director failed either to carry out the board's mandate or fully exercise his sound discretion in re-fixing the penalty is completely devoid of merit.

We turn next to appellant's contention to the effect that revocation of a license for a first offense is an abuse of discretion. In the case of *Magit vs. Board of Medical Examiners* supra, cited by appellant, the court reversed a decision revoking the license of a doctor. There the court found an abuse of discretion under special mitigating circumstances which existed in that particular case. We find no language in the decision which in any way supports the general proposition, as appellant would have it, that it is an abuse of discretion to invoke the maximum penalty of revocation of a license for a first offense. The other cases cited by appellant, supra, are also inapplicable. All involve remands for reconsideration of penalty where

error was found to have existed in each case with regard to part of the findings. For the reasons stated, we find this assertion of error to be without merit.

The remaining question and the major issue raised by this appeal is whether the penalty is commensurate with the findings. We hold absolutely no disagreement with the appropriateness of the order revoking the corporate license for the violations found to have been committed by the appellant. However, we are moved to modify the order by providing for a period of probation because of attendant circumstances.

The factor which we find most persuasive in our determination is the argument of the appellant that it has continued in business as a new car dealer licensed by the department for a period in excess of two years since the filing of the accusation in this case. This fact is supported by the records before us and no information of any derelictions whatever by appellant during this time has been brought to our attention.

Additionally, we have considered the mitigation as found by the director with particular cognizance attached to the fact that appellant's president has made certain changes in the operation of the dealership and has employed a new general manager.

In our view, appellant, having taken corrective action and having demonstrated its capability to operate, apparently without committing further violations, over the last two years, has created a reasonable expectation that it can and will in the future comply with all the requirements of the law. Consequently, we consider probation to be appropriate. This will permit the appellant to continue its business on condition that it obey all laws of the State of California and the regulations of the Department of Motor Vehicles governing its exercise of the privileges as a licensee. Should it not do so, the Director of Motor Vehicles may, after giving appellant notice and opportunity to be heard, take appropriate action to terminate the probation and revoke the corporate license.

Pursuant to Sections 3054(f) and 3055 Vehicle Code, the New Car Dealers Policy and Appeals Board amends the Decision of the Director of Motor Vehicles as follows:

WHEREFORE, the following order is hereby made:

The Vehicle Dealer's License, certificate and special plates (D-6975) heretofore issued to Williams Chevrolet, Inc., a California corporation, are hereby revoked; provided, however, that execution of said order of revocation is hereby stayed for a period of three (3) years and appellant is placed on probation for a period of three (3) years upon the following terms and conditions:

Appellant and its officers, directors and stockholders shall comply with the laws of the United States, the State of California and its political subdivisions, and with the rules and regulations of the Department of Motor Vehicles.

If appellant, or any of appellant's officers, directors or stockholders, is convicted of a crime, including a conviction after a plea of nolo contendere, such conviction shall be considered as a violation of the terms and conditions of probation.

In the event appellant shall violate any of the terms and conditions above set forth during the period of the stay, then the Director of Motor Vehicles, after providing appellant due notice and an opportunity to be heard, may set aside the stay and impose the revocation; or take such other action as the director deems just and reasonable in his discretion. In the event appellant does comply with the terms and conditions above set forth, then at the end of the three (3) year period, the stay shall become permanent and appellant's license shall be fully restored.

This Final Order shall become effective September 17, 1973 .

PASCAL B. DILDAY

W. H. "HAL" McBRIDE

JOHN ONESIAN

ROBERT A. SMITH

A-32-72(2)

D I S S E N T

We would affirm the penalty of the director in its entirety.

Licensing legislation is intended to protect the public by removing either temporarily or permanently, from the licensed business, licensees whose methods of conducting business indicate a lack of those qualities which the law demands.

Appellant has clearly and unequivocally demonstrated his lack of competency and integrity to continue as a licensed dealer. We view revocation of appellant's corporate license under the terms and conditions set forth in the decision of the director as entirely appropriate and commensurate with the findings.

GILBERT D. ASHCOM

MELECIO H. JACABAN

WINFIELD J. TUTTLE

A-32-72(2)

Appellant and its officers, directors and stockholders shall comply with the laws of the United States, the State of California and its political subdivisions, and with the rules and regulations of the Department of Motor Vehicles.

If appellant, or any of appellant's officers, directors or stockholders, is convicted of a crime, including a conviction after a plea of nolo contendere, such conviction shall be considered as a violation of the terms and conditions of probation.

In the event appellant shall violate any of the terms and conditions above set forth during the period of the stay, then the Director of Motor Vehicles, after providing appellant due notice and an opportunity to be heard, may set aside the stay and impose the revocation; or take such other action as the director deems just and reasonable in his discretion. In the event appellant does comply with the terms and conditions above set forth, then at the end of the three (3) year period, the stay shall become permanent and appellant's license shall be fully restored.

This Final Order shall become effective _____.

PASCAL B. DILDAY

JOHN ONESIAN

A-32-72(2)

W. H. "HAL" McBRIDE ✓


ROBERT A. SMITH

Appellant and its officers, directors and stockholders shall comply with the laws of the United States, the State of California and its political subdivisions, and with the rules and regulations of the Department of Motor Vehicles.

If appellant, or any of appellant's officers, directors or stockholders, is convicted of a crime, including a conviction after a plea of nolo contendere, such conviction shall be considered as a violation of the terms and conditions of probation.

In the event appellant shall violate any of the terms and conditions above set forth during the period of the stay, then the Director of Motor Vehicles, after providing appellant due notice and an opportunity to be heard, may set aside the stay and impose the revocation; or take such other action as the director deems just and reasonable in his discretion. In the event appellant does comply with the terms and conditions above set forth, then at the end of the three (3) year period, the stay shall become permanent and appellant's license shall be fully restored.

This Final Order shall become effective _____.

PASCAL B. DILDAY

JOHN ONESIAN

W. H. "HAL" McBRIDE

ROBERT A. SMITH

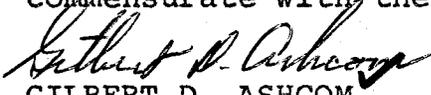
A-32-72(2)

D I S S E N T

We would affirm the penalty of the director in its entirety.

Licensing legislation is intended to protect the public by removing either temporarily or permanently, from the licensed business, licensees whose methods of conducting business indicate a lack of those qualities which the law demands.

Appellant has clearly and unequivocally demonstrated his lack of competency and integrity to continue as a licensed dealer. We view revocation of appellant's corporate license under the terms and conditions set forth in the decision of the director as entirely appropriate and commensurate with the findings.


GILBERT D. ASHCOM

MELECIO H. JACABAN

WINFIELD J. TUTTLE

A-32-72(2)

Appellant and its officers, directors and stockholders shall comply with the laws of the United States, the State of California and its political subdivisions, and with the rules and regulations of the Department of Motor Vehicles.

If appellant, or any of appellant's officers, directors or stockholders, is convicted of a crime, including a conviction after a plea of nolo contendere, such conviction shall be considered as a violation of the terms and conditions of probation.

In the event appellant shall violate any of the terms and conditions above set forth during the period of the stay, then the Director of Motor Vehicles, after providing appellant due notice and an opportunity to be heard, may set aside the stay and impose the revocation; or take such other action as the director deems just and reasonable in his discretion. In the event appellant does comply with the terms and conditions above set forth, then at the end of the three (3) year period, the stay shall become permanent and appellant's license shall be fully restored.

This Final Order shall become effective _____.

PASCAL B. DILDAY

W. H. "HAL" McBRIDE


JOHN ONESIAN

ROBERT A. SMITH

A-32-72(2)

Appellant and its officers, directors and stockholders shall comply with the laws of the United States, the State of California and its political subdivisions, and with the rules and regulations of the Department of Motor Vehicles.

If appellant, or any of appellant's officers, directors or stockholders, is convicted of a crime, including a conviction after a plea of nolo contendere, such conviction shall be considered as a violation of the terms and conditions of probation.

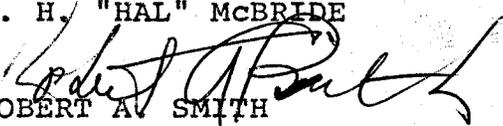
In the event appellant shall violate any of the terms and conditions above set forth during the period of the stay, then the Director of Motor Vehicles, after providing appellant due notice and an opportunity to be heard, may set aside the stay and impose the revocation; or take such other action as the director deems just and reasonable in his discretion. In the event appellant does comply with the terms and conditions above set forth, then at the end of the three (3) year period, the stay shall become permanent and appellant's license shall be fully restored.

This Final Order shall become effective _____.

PASCAL B. DILDAY

JOHN ONESIAN

W. H. "HAL" McBRIDE


ROBERT A. SMITH

A-32-72(2)

D I S S E N T

We would affirm the penalty of the director in its entirety.

Licensing legislation is intended to protect the public by removing either temporarily or permanently, from the licensed business, licensees whose methods of conducting business indicate a lack of those qualities which the law demands.

Appellant has clearly and unequivocally demonstrated his lack of competency and integrity to continue as a licensed dealer. We view revocation of appellant's corporate license under the terms and conditions set forth in the decision of the director as entirely appropriate and commensurate with the findings.

GILBERT D. ASHCOM

Melecio H. Jacoban
MELECIO H. JACABAN

WINFIELD J. TUTTLE

A-32-72(2)

D I S S E N T

We would affirm the penalty of the director in its entirety.

Licensing legislation is intended to protect the public by removing either temporarily or permanently, from the licensed business, licensees whose methods of conducting business indicate a lack of those qualities which the law demands.

Appellant has clearly and unequivocally demonstrated his lack of competency and integrity to continue as a licensed dealer. We view revocation of appellant's corporate license under the terms and conditions set forth in the decision of the director as entirely appropriate and commensurate with the findings.

GILBERT D. ASHCOM

MELECIO H. JACABAN

WINFIELD J. TUTTLE ✓



A-32-72(2)