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NEW CAR DEALERS POLICY & APPEALS BOARD

STATE OF CALIFORNIA

WILLIAMS CHEVROLET, INC., )  
a California corporation, )  
 )  
Appellant, ) Appeal No. A-32-72  
 )  
vs. ) Filed: April 26, 1973  
 )  
DEPARTMENT OF MOTOR VEHICLES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Time and Place of Hearing: March 14, 1973, 10:45 a.m.  
Room 1122, State Building  
107 South Broadway  
Los Angeles, CA

For Appellant: B. W. Minsky  
Attorney at Law  
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For Respondent: R. R. Rauschert  
Legal Adviser  
Department of Motor Vehicles  
2415 First Avenue  
Sacramento, CA 95818  
By: Richard E. Lehmann  
Staff Counsel

ORDER

Williams Chevrolet, Inc., hereinafter "appellant", appealed to this board from a disciplinary action taken against the corporate license by the Department of Motor Vehicles following

proceedings pursuant to Section 11500 et seq. Government Code.

The Director of Motor Vehicles found that appellant had:

(1) failed in two instances to submit to the department written notice of the transfer of interests in certain vehicles before the end of the third business day after transferring such interest; (2) failed in 26 instances to timely file with the department reports of sale and other documents and fees required to transfer registration of certain used vehicles; (3) failed in 11 instances to timely file with the department reports of sale and other documents and fees required to register certain new vehicles; (4) made a false statement in the application for registration of one vehicle by reporting to the department a date of sale other than the true date of sale and, with reference to the same vehicle, filed with the department a false certificate of non-operation; (5) reported to the department in one instance a date other than the true date for the first date of operation of a vehicle, thereby making a false statement in the application for registration; (6) overcharged customers for license fees in two instances; (7) represented in two instances that vehicles were new when, in fact, they were used; (8) filed with the department in two instances false powers of attorney in connection with transferring an interest in certain vehicles; (9) assisted customers in four instances

in obtaining side-loans without reflecting the loan transaction in the conditional sale contracts; (10) in 23 instances delivered vehicles, pursuant to a conditional sale contract, which did not contain in a single document all of the agreements of the buyer and the seller with respect to the total cost or terms of payment of the vehicles; (11) delivered a vehicle to a customer in one instance, pursuant to a conditional sale contract, without delivering to the buyer a copy of such contract; (12) failed in two instances to give the buyers a copy of the credit application which the buyers had signed during contract negotiations; (13) in one instance, delivered a vehicle to a customer, pursuant to a conditional sale contract, wherein the contract recited a cash down-payment of a certain number of dollars when, in fact, a portion of that amount was in the form of a post-dated check; and (14) repossessed in three instances motor vehicles pending the execution of a conditional sale contract without returning the down payments to the prospective purchasers at or near the time of repossession.

Facts of a mitigating nature found by the director are: (1) the false date of first operation finding arose from an unusual situation wherein the customer actually became the purchaser of record of three different automobiles; (2) refunds for excess license fees were ultimately made, although well

beyond the time that the overcharges were known to appellant;  
(3) some resolution was reached with the buyer in one instance concerning the representation of a used vehicle as new and, with the other, appellant offered to replace the vehicle with a new one; (4) the failure of appellant to deliver to the buyer a copy of the contract of sale appeared to be an employee's oversight; (5) appellant's president has made certain changes in the dealership's operation such as employing a new general manager and instructing him to abide by all departmental requirements; and (6) appellant sells many vehicles.

The penalty imposed by the Director of Motor Vehicles revokes the corporate license but the revocation is stayed for a period of six months in order to permit 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 to twelve months in order to achieve the transfer of stock if the director determines that the stockholders are making good faith attempts to effect such transfer.

Appellant raises two questions of law which must be disposed of before turning our attention to the substantive findings of the Director of Motor Vehicles.

DID THE HEARING OFFICER COMMIT ERROR BY DENYING APPELLANT'S  
MOTION TO BE RELIEVED OF DEFAULT FOR FAILURE TO TIMELY FILE  
DEMAND FOR CROSS-EXAMINATION OF THE DEPARTMENT'S WITNESSES?

Section 11514 Government Code authorizes any party to a proceeding conducted via the Administrative Procedure Act (Sections 11500 et seq. Government Code) to produce evidence by way of affidavit providing that party serves upon his opponent, anytime 10 or more days prior to hearing or a continued hearing, a copy of the affidavit. A notice must accompany the affidavit informing the opponent that the affidavit will be introduced into evidence. The notice must further state that the affiant will not be called to testify orally and that the opponent will not be entitled to question the affiant unless a request for cross-examination is made to the proponent of the affidavit within seven days after service of it upon the opponent. If such request for cross-examination is not timely made, the right to cross-examine the affiant is waived and the affidavit, if introduced into evidence, is to be given the same effect as if the affiant had testified orally.

The record before us shows that the department placed in the United States mail, on September 4, 1970, the Notice of Defense, Statement to Respondent and Accusation addressed to appellant. The Notice of Defense was signed by appellant's

president, George Williams, dated September 14, 1970, and requested that all correspondence concerning the matter be sent to a named law firm. It was filed by the department September 17, 1970.

On September 15, 1970, the department mailed to appellant, not the designated law firm, a Notice of Affidavits and Declaration, Affidavits and Declaration which met Section 11514 Government Code requirements and informed appellant that a request for cross-examination of affiants, to be effective, must be mailed or delivered to the department on or before September 28, 1970. It is apparent that the department placed in the mail the affidavits and accompanying documents two days before it received directions from appellant as to where future correspondence should be sent.

On November 13, 1970, counsel for appellant, B. W. Minsky, filed with the department a Demand For Cross-Examination. This demand was rejected by the department.

The relevant statute, Section 11514 Government Code, does not require the department to withhold forwarding the affidavits to the accused until such time as the Notice of Defense has been received by the department. The only time requirement concerning service of the affidavits and accompanying notice upon the opponent is that they be served 10 days or more prior to the hearing or a continuation of a

hearing. There is no contention that this was not done.

The untimely request for cross-examination was properly rejected and it follows that no error was committed by the refusal to grant appellant relief from default.

Before passing from this issue, we observe that the rejection of appellant's demand for cross-examination did not operate as a complete bar to appellant's opportunity to examine the affiants at the hearing. As indicated in the department's letter of November 30, 1970, to appellant's counsel, the department offered to furnish appellant with whatever subpoenas it required.

WAS THE EVIDENCE SUFFICIENT TO SUPPORT A FINDING OF NON-COOPERATION  
ON THE PART OF APPELLANT?

Appellant calls into question the evidentiary basis for that portion of Paragraph XVIII of the Proposed Decision, subsequently adopted by the Director of Motor Vehicles, which reads as follows:

"Respondent [appellant] does sell many vehicles. The total sales volume over the three-year period preceding the filing of the accusation amounted to something over 8,000. It is respondent's [appellant's] position that the number of violations uncovered are quite small in relation to the total sales volume. This point, however, is rejected because respondent [appellant] has not fully cooperated with employees of the Department and, in fact, respondent's [appellant's] president has hampered the investigation."

Appellant asserts that the finding of non-cooperation constituted error because the evidence used to support it was

introduced for the sole purpose of impeaching the testimony of appellant's president, George Williams. According to appellant, the department then proceeded to create from this restricted evidence an inference that a larger number of violations would have been found had there been full cooperation from appellant and its employees. The department did not charge appellant with non-cooperation or obstructing an orderly review of appellant's operation and, accordingly, did not determine that disciplinary action should flow from such conduct. However, the degree of cooperation or lack thereof is relevant for determining appropriate discipline for the findings pertaining to the charges filed. The evidence in question not only tends to impeach by contradiction the testimony of Williams but also tends to rebut appellant's theory that its violations are small in comparison to total sales volume. Further, it raises an inference that more violations would have been discovered by the department in the absence of obstructive tactics. (cf. Ford v. New Car Dealers Policy and Appeals Board, 30 Cal.App.3d 494, 106 C.R. 340.)

Appellant argues that the 54 violations found to be true should be considered in light of 8,211 transactions, according to the testimony of appellant's president, during 1968 through 1970. (R.T. 17:1-2.) On appeal, appellant characterizes as its "strongest point . . . the small amount of violations

to the total sales volume." (App.Cl.Br. 6:15-19.) The response appears to be two-fold. One, the total number of violations would have been greater had there been full cooperation with departmental investigators. Two, the period of review was intended to cover a 90-day period beginning February 25, 1970, and that this period was curtailed because of appellant's lack of cooperation and its obstructive tactics. (Resp.Op.Br. 4:12-20.) With regard to the latter contention, we find that the review by the department covered a period, at least for some charges, of about 37 months. While the department may have planned on searching for some types of violations occurring during a 90-day period only, other aspects of the review covered a much longer period. Exhibit A, attached to the accusation, shows that the review covered the sale of vehicles from May 8, 1968 (Item 37) to June 12, 1971 (Item 47).

Appellant attacks the assertion of the department that more violations would have been discovered had appellant cooperated on the grounds that the evidence used to support the finding of non-cooperation with the investigators was limited by the hearing officer to impeachment purposes only and, thus, could not properly be used to support such a finding. The record shows the hearing officer ruled that the testimony of Robert W. Edmonson, a senior special investigator for the

department, would be admitted for impeachment purposes only. This witness testified as to some obstructive tactics on the part of appellant's president and appellant's counsel made a motion to strike the testimony on the grounds that it was outside the scope of the accusation. (R.T. 245:10-17.) After the hearing officer indicated his concern over the nature of the testimony, counsel for the department responded:

"I submit, your Honor, the purpose for bringing this up -- Mr. Williams has testified as to his cooperation in furnishing the records for this investigation, and he has previously indicated that he is a large-volume dealer. There has been an indication that this is a relatively small number of violations being charged and I feel we can properly show why there is a small number of violations being charged, and Mr. Williams in his testimony on his cooperation is not entirely truthful." (R.T. 245:24 to R.T. 246:3.)

Counsel for the department then stated that the evidence was being offered primarily as impeachment of the testimony of Williams and the hearing officer declared that the evidence would be admitted "For the limited purpose only of impeachment --" (R.T. 246:8-13.)

Evidence that tends to impeach is introduced for the purpose of discrediting other evidence. "Impeach", as used with reference to the law of evidence, means to discredit. (People v. Shannon, 147 Cal.App.2d 300, 305 P.2d 101; Baxter v. Rodgers, 191 Cal.App.2d 358, 12 C.R. 635.) Impeaching evidence may be considered for only a limited purpose, namely, testing the credibility of a witness and it must be discarded for any

other purpose except one not germane to this case. (Moffatt v. Lewis, et al., 123 Cal.App. 207, 11 P.2d 397.) Evidence that has been offered specifically for a limited purpose must be confined in its effect to the purpose expressed at the time it is offered. (Baxter v. Rodgers, supra.)

The testimony of Edmonson as to the conduct of Williams during the former's presence at the licensed premises can be used only to lessen the degree of credit to be given the testimony of Williams and cannot give rise to an inference that more violations would have been discovered but for the conduct of Williams. Disbelief of a witness's testimony does not create affirmative evidence to the contrary of that which is discarded. (Lubin v. Lubin, 144 Cal.App.2d 781, 302 P.2d 49.)

If Edmonson's testimony was the sole evidence of non-cooperation, we would concur with appellant's position that the quoted portion of Finding XVIII is without evidentiary support. However, appellant overlooks the fact that there is other evidence in the case which supports that portion of Finding XVIII objected to by appellant.

The testimony of Williams provides sufficient basis for an inference of non-cooperation. Although Williams testified that he made the records available to the investigators, he did not take the steps to assist the investigators that a cooperative dealer would have taken. According to his

testimony, documents on incompletd transactions are not kept in the "jackets" but are kept in an "open file, in the unwind section." It is "...a different file altogether." These records were not made available to the investigators but, according to Williams, would have been had the investigators made a request to see them. But, Williams conceded under direct examination that departmental investigators had no way of knowing that the documents on incompletd transactions were kept in a separate location. (R.T. 224:18 to R.T. 225:13.) The testimony of a departmental investigator, Robert Pence, confirms that the investigators had no way of knowing that documents on incompletd transactions were separated from documents on completed sales. (R.T. 240:26-28.)

Furthermore, according to the testimony of appellant's president, although he was at the dealership most of the time the review was underway and conversed with the investigators, he did not take the trouble to inquire of them what violations had been discovered. (R.T. 225:25 to R.T. 226:11.) One desiring to cooperate with the state agency responsible for license supervision would have, in our view, discussed with the investigators the results of their findings and solicited from the investigators assistance in correcting procedures leading to violations that had been discovered.

There is before us other evidence in support of that portion of Paragraph XVIII under discussion. When Pence

arrived at the dealership, Williams "...informed us that his clerks were very busy and that we could see the records; however, he was not going to offer his clerks to get us any of the records -- that we were going to have to look for these records on our own." Williams showed the investigators the location of the file cabinets but Pence could not recall that Williams indicated to the investigators the location of the documents on transactions that had not been completed. (R.T. 240:17-25.) As previously indicated, Pence was not aware that these documents were kept separate from others. Williams not only did not give the investigators permission to ask appellant's clerks for information but "...he made a comment to the clerks that they weren't to answer any questions or to do any talking to us, or assist us in any way." (R.T. 241:1-5.)

Counsel for appellant made no objection to any of the questions asked Pence nor did he make a motion to strike any of the testimony of the witness. Counsel cross-examined Pence but not with reference to the non-cooperation issue.

Following cross-examination of Pence, Edmonson was called as a witness for the department. As discussed previously, his testimony was limited to impeachment of the testimony of Williams.

Appellant's motion to strike the testimony of Edmonson could in no way affect the testimony of Pence. The Pence testimony

came in unencumbered by an objection, motion to strike or declaration by the hearing officer or counsel for the department as to its purpose. A motion to strike must be made timely, otherwise, the right to make it will be deemed waived. (Starkweather v. Dawson, 14 Cal.App. 666, 112 P. 736.) The opposing party by cross-examination waives his right to move to strike those answers. (King v. Haney, 46 Cal. 560.) A party waives any objection to evidence by failure to object or move to strike. (Ortese v. Pacific State Properties, Inc., 96 Cal.App.2d 34, 215 P.2d 514; People v. Glass, 127 Cal.App.2d 751, 274 P.2d 430.)

We hold that the findings contained in Paragraph XVIII are supported by the evidence and that it is appropriate for the director to consider those findings when fixing penalty.

We now turn our attention to the substantive findings of the Director of Motor Vehicles.

ARE THE SUBSTANTIVE FINDINGS SUPPORTED BY THE WEIGHT OF THE EVIDENCE?

Appellant does not challenge the facts found by the director except those in Finding XI (false powers of attorney) and Finding XV (failure to deliver to a customer a copy of the credit application that the customer signed).

The finding that appellant filed with the department false powers of attorney in conjunction with the transfer of an interest in an automobile arose from the sale of a vehicle to Mr. and Mrs. Lawrence Booth. The evidence produced by the department consisted of an affidavit of Lawrence L. Booth (Exhibit 51) and another of his wife, Lois M. Booth (Exhibit 52). Among other things, Mr. Booth attested, "That is not my signature on the power of attorney." Mrs. Booth, among other things, attested, "I did not sign the power of attorney dated October 18, 1969."

Williams testified that he was not aware of anybody executing a false or forged power of attorney. (R.T. 201:5-7.) On cross-examination, Williams was unable to identify the signature of the witness to the powers of attorney. (R.T. 202:2-4.)

On appeal, appellant emphasized that it was not and is not the policy of appellant to forge powers of attorney and that, had appellant the opportunity to cross-examine the Booths, they would have remembered executing the documents.

We find the evidence preponderates to the view that false powers of attorney were filed by appellant with the department with reference to the Booth transaction. Accordingly, we affirm Finding XI.

Referring to the finding that appellant delivered two vehicles to customers pursuant to conditional sale contracts without delivering to the customers copies of the credit

applications which the customers had signed during contract negotiations, we hold that the weight of the evidence does not support this finding. The evidence shows that it was not the policy of the dealership to have customers sign credit applications. Charles Jereb, appellant's credit manager, testified to this effect (R.T. 88:14-26) and the testimony of Williams supports that of Jereb's. (R.T. 181:28 to 182:8.) Arellenes and Goosev submitted affidavits (Exhibits 39 and 64 respectively) attesting that a credit application was completed and signed. They did not receive a copy thereof. However, buyers sign a number of papers when purchasing a vehicle, particularly where, as here, a trade-in is involved and it would not be unusual for the purchaser to be unable to identify, after the transaction, the exact nature of the documents signed. The memory of neither of these purchasers was tested on cross-examination and no credit application was submitted into evidence to show that Arellenes and Goosev had signed the same.

We find that neither Arellenes nor Goosev signed a credit application. Accordingly, there was no obligation on the part of the dealership to deliver to either of these purchasers a copy of any credit application that may have been filled out by them or on their behalf. Finding XV of the Director of Motor Vehicles is reversed.

All other findings of fact are affirmed.

DID THE IMPOSITION OF DISCIPLINARY ACTION FOR ITEMS 10 AND 24  
OF FINDING XII CONSTITUTE ERROR OF LAW?

Item 10 of Finding XII arose from the sale of a vehicle to Charles Barnett. The department's evidence, in the form of an affidavit (Exhibit 20) from Barnett as well as his testimony at the hearing, was that Barnett purchased a vehicle from appellant and signed a contract before taking possession thereof. Barnett was told a side-loan would be needed to finance the vehicle. Appellant arranged for the loan from an independent finance company. It was obtained two or three days after Barnett took possession of the vehicle.

A copy of the contract signed by Barnett and the appellant was received into evidence as the Department's Exhibit 21. It is dated February 15, 1970; calls for a lump sum payment on some unspecified date during February of 1970 and shows no indication of a side-loan.

Under cross-examination, it was confirmed that no side-loan had been obtained by Barnett at the time the contract of February 15, 1970, had been signed. (R.T. 39:28 to R.T. 40:2.) Appellant introduced into evidence, as its Exhibit D, a copy of another conditional sale contract entered into between appellant and Barnett. It was dated March 11, 1970, and shows the terms of a side-loan.

The department contends the failure of the appellant

to reflect the terms of the side-loan in the first contract constitutes a violation of Section 2982.5 Civil Code. We do not agree with this contention. That section, in relevant part, states:

"(b) Nothing in this chapter shall be deemed to prohibit the seller's assisting the buyer in obtaining a loan upon any security from any third party to be used as a part or all of the down payment or any other payment on a conditional sale contract or purchase order; provided that the conditional sale contract sets forth on its face the amount of the loan, the finance charge, the total thereof, the number of installments scheduled to repay the loan and the amount of each such installment, that the buyer may be required to pledge security for the loan . . ."

Our disagreement with the department's position is based upon the fact that (1) no side-loan was in existence at the time the first contract was signed and (2) the terms of the side-loan were properly reflected in the second contract. We do not believe Section 2982.5 Civil Code contemplates the incorporation into the contract of sale the terms of a loan that had not been negotiated at the time the contract for the sale of the vehicle was signed. Accordingly, we reverse the determination of the Director of Motor Vehicles that the finding concerning Item 10 in Paragraph XII of his decision constitutes grounds for disciplinary action.

We do not agree that Item 24 of Finding XII constitutes grounds for license discipline. The facts found by the

director are as follows:

"In connection with that purchase of a vehicle described as Item 24, the failure to set forth a side loan did occur when this individual purchased three separate automobiles. In attempting to purchase the second of the three vehicles, this customer borrowed \$400. Thereafter, the second car was turned back and the customer purchased the vehicle described as Item 24. A further side loan was necessary in order to complete this third purchase. The second loan was, in fact, shown on the contract, but the first loan of \$400 was not so shown, even though the customer received credit for this sum and was, of course, required to pay the \$400 in due course."

There is no language in Section 2982.5 Civil Code which suggests that the Legislature intended that a side-loan, obtained to purchase a vehicle that is subsequently traded for a second vehicle financed under a conditional sale contract with another side-loan, should be reflected in the contract for the sale of the second vehicle with the side-loan for that second vehicle. Whatever obligations attached to the financing of the first vehicle should not be recorded in a contract which sets forth the financial obligations arising from the purchase of the second vehicle. These purchases are separate and distinct transactions and the fact that the first vehicle becomes a part of the down payment of the second makes them no less separate and distinct. The first vehicle is not in any way security for the first side-loan. The mere fact that the first vehicle is made a part of the down payment on the second vehicle does not tie the first side-loan to the

purchase of the second vehicle.

We are cognizant of the fact that the Automobile Sales Finance Act (Section 2981 et seq. Civil Code) is basically a disclosure provision. Its purpose is to protect the automobile purchaser from excessive charges by requiring full disclosure of all items of cost. (Carter v. Seaboard Finance Company, 33 Cal.2d 564, 203 P.2d 758; Ryan v. Mike-Ron Corp., 226 Cal.App.2d 71, 37 C.R. 794.) But, in so protecting the purchaser, it does not go so far as to require the same side-loan be twice disclosed. We reverse the determination that the finding concerning Item 24 in Paragraph XII of the decision constitutes grounds for disciplinary action.

DID THE IMPOSITION OF DISCIPLINARY ACTION FOR FINDING XVI  
CONSTITUTE ERROR OF LAW?

The director found that appellant violated Section 2982(a)(2) Civil Code by not reflecting in a conditional sale contract the true means used by the buyer to make the down payment on a vehicle. Appellant delivered a vehicle pursuant to a conditional sale contract which recited a cash down payment of \$300 when, in fact, only \$100 of that amount was cash. The remaining \$200 was in the form of a postdated check.

Appellant does not dispute the facts but argues that they do not provide a basis for imposition of penalty. In Highway

Trailer of California, Inc., v. Frankel, 250 Cal.App.2d 733, 58 C.R. 883, the plaintiff-seller was denied recovery under a conditional sale contract for the purchase of two trailers on the grounds that plaintiff-seller had failed to comply with Section 2982 Civil Code; to wit, a postdated check had been designated for down payment purposes as "cash". The Highway Trailer court found Bratta v. Caruso, 16 Cal.App.2d 661, 333 P.2d 807, to be in point. That case held that the conditional sale contract did not conform to the requirements of Section 2982 because the vehicle dealer designated a promissory note as cash for down payment purposes. These cases are controlling and, therefore, Finding XVI is hereby affirmed.

IS THERE LEGAL SIGNIFICANCE TO THAT PORTION OF FINDING XVII RECITING THAT APPELLANT REPOSSESSED VEHICLES WITHOUT FIRST ADVISING THE PURCHASER?

Paragraph XVIII of the accusation alleges:

"That Respondent [Appellant] repossessed a motor vehicle described as Item 40 in Exhibit A, attached hereto and by this reference made a part hereof, pending the execution of a conditional sales contract without returning the buyers down payment thereby violating Civil Code Section 2982.7 incorporated by reference in Vehicle Code Section 11705."

The department subsequently filed an amended accusation which among other things, added Items 43 and 46 to Paragraph XVIII.

Finding XVII pertains to the above allegation which, in relevant part, reads as follows:

"Respondent [Appellant] repossessed those motor vehicles described as Item 40, in Exhibit A, attached to the accusation herein, and Items 43 and 46 described in Exhibit A, attached to the amendment of the accusation herein. The repossession was made without first advising the prospective purchasers and pending the execution of a conditional sales contract. In each of these three instances, the down payment was not returned to the prospective purchasers at or near the time of the repossession." (Emphasis added.)

It is true that the repossessions were made without first advising the prospective purchasers but, as conceded by counsel for the department during oral argument, there was no requirement at the time these repossessions occurred that the secured party notify the debtor the collateral was about to be repossessed. The phraseology "...without first advising the prospective purchasers and..." is mere surplusage.

Two basic purposes of findings by an administrative agency are to enable the reviewing tribunal to examine the decision of the agency in order to determine whether it is based on proper principles and to inform the parties the reason for the administrative action as an aid to them in deciding whether additional proceedings should be initiated and, if so, upon what grounds (Swars v. Council of City of Vallejo, 33 Cal.2d 867, 206 P.2d 355). Neither this board nor appellant can ascertain from the record whether the finding that no notification was given prior to repossession was taken

into consideration when penalty was determined. If it was taken into consideration, prejudice to the appellant may have resulted. We, therefore, direct that the language "...without first advising the prospective purchasers and..." be stricken from Finding XVII.

PENALTY

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 surplusage in Finding XVII of the Director's Decision constitutes prejudicial error, we hereby remand the matter to the department, pursuant to Section 3056 Vehicle Code, for refixing of penalty not inconsistent with this Order.

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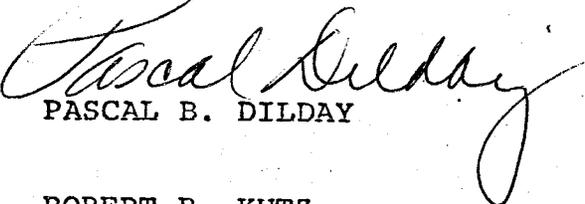
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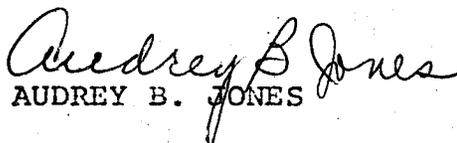
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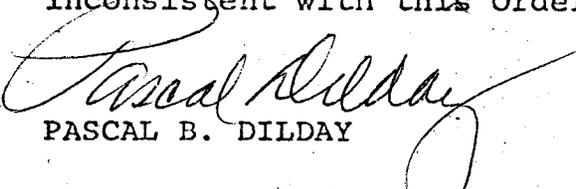
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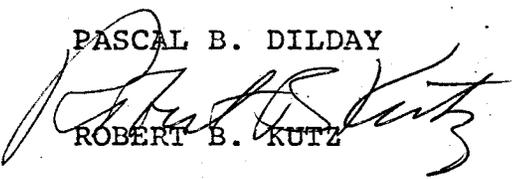
into consideration when penalty was determined. If it was taken into consideration, prejudice to the appellant may have resulted. We, therefore, direct that the language "...without first advising the prospective purchasers and..." be stricken from Finding XVII.

PENALTY

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 surplusage in Finding XVII of the Director's Decision constitutes prejudicial error, we hereby remand the matter to the department, pursuant to Section 3056 Vehicle Code, for refixing of penalty not inconsistent with this Order.

PASCAL B. DILDAY

AUDREY B. JONES

  
ROBERT B. KUTZ

W. H. "HAL" McBRIDE

ROBERT A. SMITH

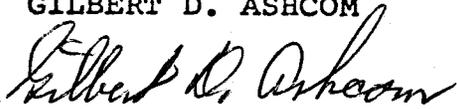
WINFIELD J. TUTTLE

A-32-72

D I S S E N T

We dissent. We would affirm the Decision of the Director of Motor Vehicles in its entirety.

GILBERT D. ASHCOM



MELECIO H. JACABAN

A-32-72

D I S S E N T

We dissent. We would affirm the Decision of the Director of Motor Vehicles in its entirety.

GILBERT D. ASHCOM

*Melecio H. Jacaban*  
MELECIO H. JACABAN

A-32-72