

2415 First Avenue
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(916) 445-1888

STATE OF CALIFORNIA

NEW CAR DEALERS POLICY & APPEALS BOARD

In the Matter of)
)
WORTHINGTON MOTORS, dba)
WORTHINGTON DODGE, a)
California corporation,)
)
Appellant,) Appeal No. A-40-73
)
vs.) FILED: January 25, 1974
)
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)
)
Respondent.)
_____)

Time and Place of Hearing: January 9, 1974, 10:30 a.m.
City Council Chambers
City Hall
1685 Main Street
Santa Monica, CA 90401

For the Appellant: Louis Gotenstein and Marvin Gross
Attorneys at Law
Grayson & Gross, Inc.
3460 Wilshire Blvd., Suite 810
Los Angeles, California

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

FINAL ORDER

Worthington Motors, a California corporation, doing business
as Worthington Dodge, hereinafter referred to as "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, adopting the proposed decision of the hearing officer, found that appellant had: (1) failed in 103 instances to give written notice to the department within three days after transfer of vehicles; (2) failed in 484 instances to mail or deliver reports of sale of vehicles (with documents and fees) to the department within 20 days; (3) failed in 177 instances to mail or deliver reports of sale of vehicles (with documents and fees) to the department within 30 days.

In addition, the following facts in mitigation and aggravation were found: (1) The acts and omissions chargeable to appellant resulted in part from a chaotic condition of the record-keeping of appellant brought about by a deliberate course of conduct by appellant's then business and office manager, including embezzlement, designed to benefit said individual and to injure appellant-employer.^{1/} (2) While substantial efforts were undertaken by appellant to correct said situation, when discovered by appellant, the efforts were not adequate to the task and correction of the faulty practices, though finally effected,

1/ During oral argument, counsel for the respondent suggested that the board consider reversing this finding. As this finding was adopted by the Director of Motor Vehicles in his decision, counsel's actions in proffering this suggestion is deemed to have been wholly improper.

was not effected with due diligence and dispatch. (3) Appellant's retail sales averaged 375 to 400 vehicles per month. (4) In 1960, appellant's license was suspended for 180 days with 175 days stayed for similar conduct as in the present case, plus additional fraudulent acts.

The director, adopting the proposed decision of the hearing officer, suspended appellant's dealer license, certificate and special plates for a period of five (5) days.

During oral argument, counsel for the appellant stated that the only issue raised by this appeal was that of the propriety of the penalty imposed, all issues of fact being admitted. Nonetheless, we have reviewed the evidence, resolved conflicts therein, drawn such inferences as we believe reasonable and have arrived at our own determination regarding credibility of witnesses in the transcript of the administrative proceedings. (Section 3054, subsection (d), Vehicle Code; Park Motors, Inc. vs. Department of Motor Vehicles, A-27-72, citing Holiday Ford vs. Department of Motor Vehicles, A-1-69.) Further, we have considered the legal arguments propounded by appellant in his brief and find them to be without merit.

Having independently weighed all of the evidence in light of the whole record, we determine that all of the findings, as found by the director, are supported by the evidence. We further find that the department has not exceeded its juris-

diction nor has it proceeded in a manner contrary to law. Accordingly, all of the findings of fact and determination of issues relating thereto are affirmed.

Having carefully and fully considered and weighed all of the matters established by the appellant in mitigation and extenuation in this case, we find the penalty to be entirely commensurate with the findings. In reaching this determination, we have considered the previous license disciplinary action taken by the department against this appellant, with full cognizance that the resultant penalty was imposed in 1960.

The Decision of the Director of Motor Vehicles is affirmed in its entirety.

This final order shall become effective February 22, 1974 .

THOMAS KALLAY

PASCAL B. DILDAY

GILBERT D. ASHCOM

ROBERT A. SMITH

WINFIELD J. TUTTLE

D I S S E N T

I dissent in part. Having duly considered the matters in mitigation in light of the nature of the violations, I do not consider the actual imposition at this time of a five (5) day suspension to be appropriate. I would approve the five (5) day

suspension, but stay the execution thereof and place the appellant on probation for a period of two (2) years on the usual terms and conditions.

W. H. "HAL" McBRIDE

A-40-73

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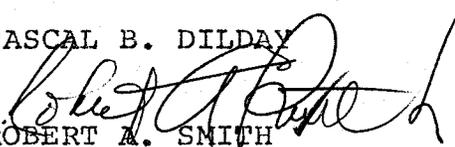
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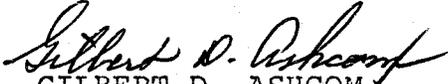
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W. H. "HAL" McBRIDE

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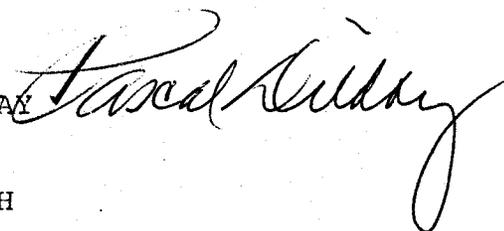
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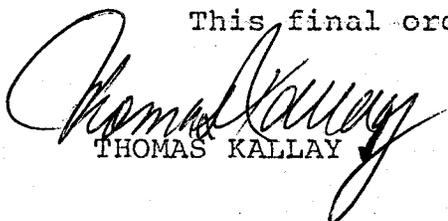
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