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STATE OF CALIFORNIA

NEW CAR DEALERS POLICY & APPEALS BOARD

In the Matter of)	
)	
THOMAS WAYNE RHODES, dba)	
RHODES MOTOR CENTER,)	
)	
Appellant,)	Appeal No. A-44-73
)	
vs.)	FILED: March 14, 1974
)	
DEPARTMENT OF MOTOR VEHICLES)	
OF THE STATE OF CALIFORNIA,)	
)	
Respondent.)	

Time and Place of Hearing: February 13, 1974, 11:00 a.m.
Auditorium (First Floor)
2570 - 24th Street
Sacramento, CA 95818

For Appellant: John A. Childers, Esq.
Attorney at Law
Thompson, Lyders & Laing
P. O. Box 968
Ventura, CA 93001

For Respondent: R. R. Rauschert, Legal Adviser
Department of Motor Vehicles
By: Karl Engeman
Legal Counsel

FINAL ORDER

Thomas Wayne Rhodes, doing business as Rhodes Motor Center,
hereinafter referred to as "appellant", appealed to this board

from a disciplinary action taken against the dealer's license by the Department of Motor Vehicles following proceedings pursuant to Sections 11500 et seq. Government Code.^{1/}

Because the administrative record raised a question concerning the board's jurisdiction to hear and decide the matter, the parties were afforded an opportunity to file with the board a memorandum of points and authorities on the jurisdictional question.

After reviewing the points and authorities submitted by both parties and considering the oral arguments of the respondent, appellant having elected not to appear in person before the board, we conclude for the reasons discussed hereinafter that the jurisdictional limitations imposed by statute preclude us from hearing and deciding the merits of this appeal.

FACTS

The pertinent facts in brief are that the appellant has been licensed as a dealer since 1956 and subsequently was enfranchised to sell Triumphs and Fiats. Appellant's franchise to sell Triumphs was terminated May 15, 1970, and the department received notification of such action from the franchisor on May 18, 1970. The franchise to sell Fiats was terminated on June 1, 1970, however, the department was not aware of this information until on or about October 16,

^{1/} The board takes official notice of the fact made known to it during respondent's argument that there is now pending a petition for writ of mandamus filed by Thomas Wayne Rhodes vs. Department of Motor Vehicles. This petition for writ of mandamus was filed in the Superior Court of the State of California for the County of Ventura on August 30, 1973.

1973, when it requested confirmation from the franchisor, which was received in a letter dated October 18, 1973. During each of the years in which appellant held a motor vehicle dealer's license, 1970 through 1973, he paid the fee to the department which this board prescribed for the issuance or renewal of a license to do business as a new car dealer (Section 11723 Vehicle Code and Section 553, Title 13 Cal. Admin. Code). When the department discovered that the Fiat franchise had been cancelled, it retrieved from the appellant the 1971, 1972 and 1973 new vehicle report of sales books and advised him that he could apply for a refund of the fees paid which were required of new car dealers. In the interim, because of the computer system utilized by the department, a renewal card was mailed to the appellant requesting the renewal fee and the new car dealer fee for 1974. Both were paid by appellant. Upon this discovery, the department retrieved from the appellant his 1974 new report of sale books and processed a refund of the new car dealer's fee.^{2/}

All violations in this case occurred from September 1970 through March 1971, subsequent to the termination of the Fiat franchise on June 1, 1970.

^{2/} There is no evidence or indication that appellant's dealer license was suspended or revoked at any time or that the department denied him report of sale books for used cars. According to respondent's oral argument, dealer's licenses issued are not designated as "new car dealer's license" or "used car dealer's license". Both are issued as "dealer license", the only difference being in the distribution of new vehicle report of sale books to those dealers who state to the department that they are enfranchised to sell new cars.

RELEVANT STATUTES

The jurisdiction of this board is circumscribed by Sections 3051 and 426 Vehicle Code as follows:

"3051. The provisions of this chapter are not applicable to any person licensed as a manufacturer or transporter or salesman under Article 1 (commencing with Section 11700) of Chapter 4 of Division 5, or to any licensee thereunder who is not a new car dealer. The provisions of this chapter shall be applicable to a new car dealer or any person who applies for a license as, or becomes, a new car dealer as defined in Section 426."

"426. 'New car dealer' is a dealer, as defined in Section 285, who, in addition to the requirements of that section, acquires for resale new and unregistered motor vehicles (excluding motorcycles as defined in Section 400 of this code) and new and unregistered trucks from manufacturers or distributors of such motor vehicles and trucks. No distinction shall be made, nor any different construction be given to the definition of 'new car dealer' and 'dealer' except for the application of the provisions of Chapter 5 (commencing with Section 3000) of Division 2 of this code, which chapter shall apply only to new car dealers as defined in this section."

DISCUSSION

At the outset, it is appropriate to observe that an administrative tribunal has the power to determine its own jurisdiction in the first instance (2 Cal.Jur.3d §150, citing United States vs. Superior Court 19 Cal.2d 189; 120 P.2d 26). This truism has its origin mainly in the cases holding that a court has inherent power to inquire into its jurisdiction of its own motion regardless of whether the question is raised by

the litigants (Abelleira vs. District Court of Appeal, 17 Cal.2d 280; 109 P.2d 942).

While we take cognizance of all the pertinent events which transpired as set forth above, the crux of the question before us is what the status of the appellant was at the time of the violations; i. e., from September 1970 through March 1971.

There is no evidence in the administrative record nor has any representation been made by the appellant^{3/} that since June 1, 1970, he has sold or has been enfranchised to sell new cars, or more particularly within the statutory definition (Section 426 Vehicle Code) that he has acquired for resale new and unregistered motor vehicles or trucks from manufacturers or distributors of such motor vehicles or trucks.

We do find in appellant's points and authorities language which by strong implication negates any position that he did fall within the Vehicle Code definition. At page 3, lines 20 through 30, of appellant's memorandum filed January 14, 1974, we find: "Section 3051 makes no provision for the present situation where a new car dealer licensee continues to hold a new car dealer's license but ceases to acquire new and unregistered motor vehicles for resale." (Underscoring supplied.)

3/ In the usual case, the record contains abundant references to the appellant's acquisition and sale of new cars. Such is not the case here. The appellant in the instant case has failed to supply a sufficient evidentiary basis for the Board's jurisdiction.

Subsequently, we find at page 2, lines 11 through 15, of appellant's supplemental memorandum the following language: "Respondent also ignores the fact that being the holder of a new car dealers license, appellant could have acquired unregistered vehicles from other dealers and sold them had it been appropriate in the appellant's business." (Underscoring supplied.)^{4/}

In these sections quoted, we disregard appellant's conclusion that he was a new car dealer for it is that issue which is before us for decision. The underscored portions, however, when considered together appear as an unequivocal admission that appellant since June 1, 1970, has not acquired for resale any new and unregistered vehicles. Thus, at the time of the violations, he was outside the purview of the definition of a "new car dealer" and did not fall within the board's jurisdictional boundaries fixed by the Legislature. This is so, notwithstanding the fact that he paid new car dealer's fees and was furnished the documentation by the department to originate new vehicle titles.

The status appellant would now have us find so as to bring him within our jurisdiction was actually the results of his

^{4/} The Vehicle Code contains no definition of the term "distributor" but in the posture of the present case, we need not address this matter.

own failure to comply with a requirement of the Vehicle Code.^{5/} However, in view of the basis for our conclusion resting squarely on our interpretation and application of the definitions cited above, we need not concern ourselves with any discussion of estoppel. Further, because we are concerned here with jurisdiction of this board, a matter granted and circumscribed by the Legislature, we consider the acts of the department in collecting new car dealer fees from the appellant and issuing him new vehicle report of sale books as having no impact on our determination herein.

CONCLUSION

The appeal filed in the above-entitled case is hereby dismissed on the grounds that the board lacks jurisdiction. This dismissal shall become effective upon the filing of this Final Order.

WINFIELD J. TUTTLE

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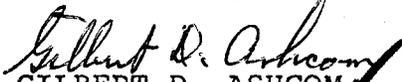
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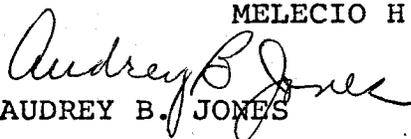
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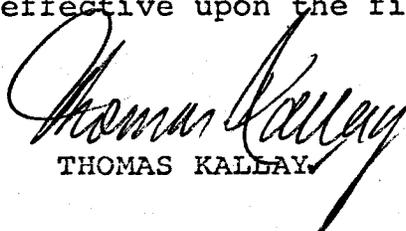
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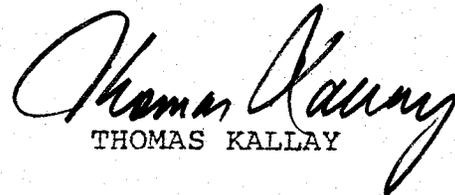
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