

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

STATE OF CALIFORNIA

NEW CAR DEALERS POLICY & APPEALS BOARD

In the Matter of )  
 )  
WES BEHEL VOLKSWAGEN, )  
A California corporation, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
DEPARTMENT OF MOTOR VEHICLES )  
OF THE STATE OF CALIFORNIA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Appeal No. A-50-74

FILED: May 31, 1974

Time and Place of Hearing:

May 8, 1974, 1:30 p.m.  
1020 "N" Street, Room 102  
Sacramento, CA 95814

For Appellant:

Marvin G. Giometti, Esq.  
Attorney at Law  
Barbieri, Giometti, Scott & Steiner  
111 Sutter  
San Francisco, CA 94104

For Respondent:

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

FINAL ORDER

Wes Behel Volkswagen, a California corporation, enfranchised  
as a new car dealer, 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: (1) failed in thirteen instances to give written notice to department within three days after transfer of vehicles; (2) appellant failed in 251 instances to mail or deliver reports of sale (with documents and fees) to department within 20 days; (3) in 32 instances charged purchasers of vehicles excessive registration fees.

In addition, the director found, in essence, the following: (A) On or about 21 March 1972, all overcharges were correctly refunded with two exceptions: (1) in one case only \$9.00 was refunded of the \$11.00 due. (2) In another case, \$8.00 was refunded but only \$5.00 was due. (B) The late reporting violations were caused principally by an employee placed in charge of all "DMV" work. This employee had been properly instructed regarding the manner in which she was to comply with the department requirements respecting said documents and other items by her supervisor. Her supervisor believed in good faith that said employee was properly carrying out her duties and functions regarding compliance with the department's said requirements. There was evidence of some delays in giving the department required notices but, for a considerable period of time,

it was believed that the delays were due to faulty mail service. Said employee left appellant's employ in September 1971 at about which time she returned to appellant's office a sack of documents containing reports, notices and the matters which she had not in fact forwarded to the department or completed. The supervisor was completely stunned by the amount of documents involved and it took the supervisor a period of time to rectify the situation. (C) A new capable replacement has been employed and is being carefully supervised to insure compliance with all laws. (D) Appellant employs 40-50 people and its average balance for 1971 was \$88,344. If suspended, ten salesmen, two managers and other clerical help will be terminated and appellant will operate with a skeleton force. Wes Behel has been in the automobile business for 18 years and has no record of prior disciplinary proceedings. The violations were due to negligence and not to gross lack of care or supervision. The supervisor had been completely misled by the "DMV girl" and believed at all times that said employee was following all legal requirements as she had been directed to do. Appellant's representatives cooperated fully with department in rectifying its mistakes.

The director, modifying the hearing officer's proposal, promulgated a decision imposing a penalty of 15 days' suspension with 10 days stayed for a probationary period of one year on the usual terms and conditions.

Although the appellant in its notice of appeal requested to augment the record in pursuance of paragraph 3054(e) Vehicle Code, no evidence was proffered nor any offer of proof made. Accordingly, the appropriateness of the penalty imposed by the Director of Motor Vehicles is the only issue this appeal presents for our consideration.

At the outset, we observe that appellant in its briefs and in argument before this board agrees with our holding that "a corporate licensee is responsible for all acts of its officers, agents and employees acting in the scope of their employment. A contrary rule would, of course, preclude meaningful license discipline." (Imperial Motors v. Department of Motor Vehicles, A-28-72; Bishop-Hansel Ford v. Department of Motor Vehicles, A-39-73; Main Toyota v. Department of Motor Vehicles, A-37-73.) Predicated on this axiomatic conclusion, we have no hesitancy in affirming the findings of fact and conclusions of law in this case. Nor do we have any reservations with respect to the need here for license disciplinary action. Under the circumstances presented, however, the penalty imposed does give us pause.

There is no contest in the record before us regarding the derelictions and negligence of the "DMV girl" whose actions in keeping a large amount of "DMV" work at her home resulted for the most part in appellant's present predicament. We are

also satisfied that the degree of supervision of the "DMV girl" by appellant's business manager was less than acceptable, particularly after her suspicions were aroused that perhaps delays were not being caused by faulty mail service.

Nevertheless, we are confronted with the findings of fact of the hearing officer who took great pains to set forth in detail the appellant's evidence in mitigation and extenuation of the violations. The hearing officer found, and the director concurred in, the findings that the "DMV girl" had been properly instructed by her supervisor, that the supervisor had been completely misled by the conduct of this employee, that the failures and omissions were the result of negligence at most, and were not due to a gross lack of care or supervision, and that the supervisor believed at all times that said employee was following all legal requirements as she had been directed to do. Significantly, we have the finding that the supervisor believed in good faith that the employee was properly carrying out her duties and functions regarding compliance with the department's requirements. (Emphasis added.) In our view, this specific and express finding by both the hearing officer and director that the supervisor acted in good faith, along with the other mitigating factors in this case, serves to militate against our affirming the entire penalty imposed by the director.

In the special circumstances presented by this appeal, and particularly in view of the finding that the supervisor's conduct,

imputable to the appellant, was in good faith, we are constrained to hold that a penalty involving an actual shutdown of business for more than one day is inappropriate.<sup>1/</sup>

Having independently weighed all of the evidence in light of the whole record, all of the findings of fact and determination of issues are affirmed.

In light of our foregoing discussion with regard to the penalty imposed, 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-598) heretofore issued to appellant, Wes Behel Volkswagen, a California corporation, are suspended for a period of fifteen (15) days; provided, however, that fourteen (14) days of the said fifteen-day period of suspension is stayed for a period of one year from the effective date of this final order during which time the appellant shall be placed on probation to the Director of Motor Vehicles upon the following terms and conditions:

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1/ In reaching our conclusion herein, we are not unmindful of the more severe penalties we affirmed in the cases of Bob Frink Chevrolet, Inc., v. Department of Motor Vehicles, A-46-72 and Worthington Motors v. Department of Motor Vehicles, A-40-73, both of which involved wrongful acts of employees. The foregoing cases, however, presented more aggravating circumstances in the form of significantly larger numbers of late reports or numerous instances of false reporting. As we have noted time and again, each case must be decided on its own merits.

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 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 stayed portion of the suspension, 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 one-year period, the stay shall become permanent and appellant's license fully restored.

This Final Order shall become effective June 28, 1974.

THOMAS KALLAY

AUDREY B. JONES

WINFIELD J. TUTTLE

ROBERT A. SMITH

PASCAL B. DILDAY

MELECIO H. JACABAN

A-50-74

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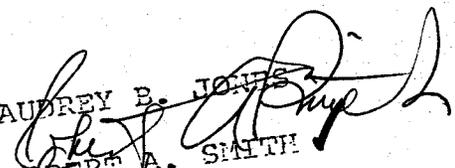
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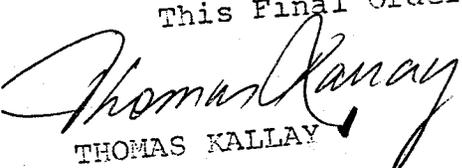
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