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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of)
)
SAVAGE PONTIAC CENTER, INC.,)
a California corporation,)
)
Appellant,)
)
vs.)
)
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)
)
Respondent.)
_____)

Appeal No. A-52-74
FILED: October 28, 1974

Time and Place of Hearing:

August 14, 1974, 11:20 a.m.
City Council Chamber, City Hall
1685 Main Street
Santa Monica, CA

For Appellant:

George E. Leaver
Getz, Aikens & Manning
Attorneys at Law
5900 Wilshire Blvd., Suite 770
Los Angeles, CA 90036

For Respondent:

R. R. Rauschert, Chief, Legal Section
Department of Motor Vehicles
By: Leo Bingham
Legal Counsel

FINAL ORDER

Savage Pontiac Center, Inc., a California corporation, herein-
after 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 31 instances to mail or deliver the reports of sale of new vehicles (together with documents and fees) to the department within 20 days; and (2) appellant in 21 instances charged purchasers of vehicles excessive registration fees. In addition, the director further found: (a) On January 6, 1969, and on April 19, 1971, letters of warning were sent to the appellant by the Department of Motor Vehicles as to reporting violations of the same type as are the subject of the accusation; (b) corrective measures have been instituted to prevent further delinquent filings, restitution has been made of all overcharges; and (c) appellant has been in the automotive business for many years with no prior disciplinary action.

The director, adopting the hearing officer's proposed decision, imposed a penalty of ten (10) days' suspension for each cause of disciplinary action, to run concurrently, with 5 days stayed for a one-year period of probation on the usual terms and conditions.

BASIS OF APPEAL

Appellant bases his appeal on the following specific contentions:

1. It was misled by employees of the DMV regarding the need for representation by counsel; consequently, it was represented by Peter Savage, a layman, who was confused, unprepared, and inexperienced in matters regarding admission of evidence, all of which resulted in a denial of due process;
2. The appellant was prejudiced by the improper admission in evidence of the letter of April 1971;
3. That Finding VI, regarding warning letters of the "same type" of violations is not supported by the evidence as neither warning letter contained any reference to overcharge violations (Section 11713(g) Vehicle Code); and
4. Because of the strong evidence in mitigation, the penalty is too harsh and the entire suspension should be stayed.

This appeal came on for hearing on August 14, 1974. At that time, appellant made an offer of proof to obtain the board's permission to augment the record with evidence relevant to its allegation of denial of due process. Before ruling on the matter of augmentation, the board directed that both sides file briefs and continued the case accordingly.

Subsequently, both parties indicated to the board that in lieu of filing briefs, they were formalizing a stipulation in an

attempt to appropriately resolve the issue raised by appellant at the hearing. Consequently, at its meeting of September 11, 1974, the board made a determination to accept and consider a stipulation in lieu of briefs. A "Stipulation for Reversal" was executed and filed with the board on September 30, 1974. The essence of that stipulation is hereinafter set forth:

"IT IS HEREBY STIPULATED, by and between the Appellant... and the Department of Motor Vehicles,...that the Decision of the Director herein appealed from be reversed... in that there was relevant evidence which in the exercise of reasonable diligence could not have been produced on behalf of the Appellant at the hearing.

"IT IS FURTHER STIPULATED that the reversal shall be without prejudice to refileing and resetting of the accusation by the department against Appellant."

The board, accepting the stipulation and after duly considering its contents, deems it to be an appropriate basis for exercising its authority pursuant to Section 3054(e) of the California Vehicle Code.

WHEREFORE THE FOLLOWING ORDER IS HEREBY MADE:

The decision of the director, in its entirety, is hereby reversed without prejudice. The case is remanded to the director for new or additional proceedings or such other action or disposition as the director in the exercise of his discretion deems appropriate.

This Final Order shall become effective when served upon
the parties.

THOMAS KALLAY

WINFIELD J. TUTTLE

ROBERT A. SMITH

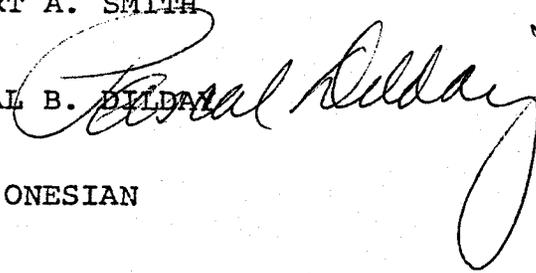
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PASCAL B. DILLON

JOHN B. VANDENBERG

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This Final Order shall become effective when served upon
the parties.

THOMAS KALLAY

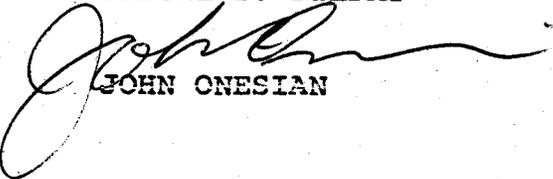
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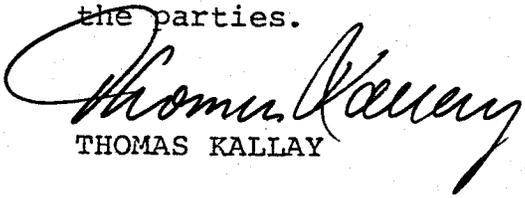
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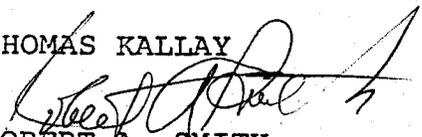
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MELECIO H. JACABAN

NEW MOTOR
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This Final Order shall become effective when served upon the parties.

THOMAS KALLAY

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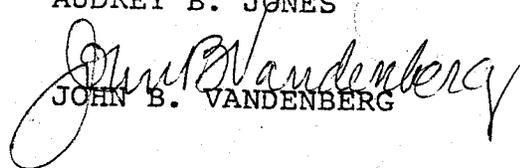
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