

P. O. Box 31  
2415 First Avenue  
Sacramento, CA 95801  
(916) 445-1888

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of	)	
	)	
ELMER J. DREW and	)	
JOSEPH C. DREW, dba	)	
DREW FORD,	)	
A Partnership,	)	
	)	
Appellant,	)	Appeal No. A-53-74
	)	
vs.	)	FILED: September 12, 1974
	)	
DEPARTMENT OF MOTOR VEHICLES	)	
OF THE STATE OF CALIFORNIA,	)	
	)	
Respondent.	)	

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Time and Place of Hearing: August 14, 1974, 10:15 a.m.  
City Council Chambers, 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, Legal Adviser  
Department of Motor Vehicles  
By: Leo Bingham  
Legal Counsel

FINAL ORDER

Drew Ford, a partnership, enfranchised as a new car dealer,  
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 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 18 instances to give written notice to the department within three days after transfer of vehicles; (2) failed in 176 instances to mail or deliver reports of sale (with documents and fees) to the department within 20 days; (3) failed in 25 instances to mail or deliver reports of sale (with documents and fees) to the department within 30 days; (4) failed in 53 instances to mail or deliver reports of sale (with documents and fees) to the department within 40 days; and (5) in 38 instances charged purchasers of vehicles excessive registration fees.

In addition, the director adopting the hearing officer's proposed decision made the following findings which, essentially, sum up the evidence presented by the appellant:

A. Subsequent to a meeting between the appellant, Elmer Drew, along with six of his employees and two representatives from the department, appellant was warned by letter dated December 12, 1967 of the need for improving its compliance with the reporting requirements of the department, including among other things late submission of transfer applications, and failure to submit or late submission of dealer notices under Vehicle Code Section 5901.

B. Appellant, Elmer J. Drew, has been in business for forty (40) years in La Mesa at eight (8) different locations with no prior disciplinary actions having been brought against his license. The meeting with department investigators resulting in the warning letter set out in A above being the only failure to comply with the Vehicle Code on his record.

C. In 1970, Elmer Drew turned over active management of the dealership to his partner and son, Joseph C. Drew. Joseph was apparently unable and unready to handle the job due to his inexperience and the increase of total sales by six to eight hundred units in 1971 and 1972. During this period most of the violations in (1) through (5) above occurred.

D. Due to inefficient management and untrained or negligent clerical help, the hundreds of violations set forth in Schedules A and B occurred. In August of 1972, and prior to the date of the accusation herein, appellant hired Ernest (Pat) Grace, a former dealer and president of the San Diego Motor Car Dealer's Association, as manager, to clean up the mess.

E. It took from August 1972 to approximately May 1973 to establish a reasonably efficient system of paper flow to bring the dealership in compliance. It was necessary to fire the business manager, change the sales manager, fire the transfer clerk and hire another. At the present time appellants have separate clerks for new and used cars, a day-to-day log, a new car log, a Department of

Motor Vehicles refund log, make refunds on a daily basis, recap daily sales and monthly sales and have three checks on salesmen. All overcharges mentioned herein have been refunded and since May of 1973 appellants have made 1,000 sales with only 9 or 10 misuses.

The director, adopting the proposed decision of the hearing officer, imposed a penalty of 15 days' suspension with 12 days stayed for a period of one-year's probation under the usual terms and conditions. The appropriateness of the penalty is the only issue presented by this appeal. Appellant contends that an actual suspension of 3 days is too harsh and severe and requests that under all of the circumstances of this case, it be reduced to an actual suspension of one (1) day, with fourteen (14) days stayed for a one-year's probationary period.

While we strongly adhere to the rule that each case must be decided on its own merits (Main Toyota v. Department of Motor Vehicles, A-37-73), in determining propriety of penalty in this case we cannot disregard the director's decision and our affirming action in Dick Grihalva Chevrolet v. Department of Motor Vehicles, A-45-73. 1/

A distinction the department attempts to draw between this case and Grihalva v. Department of Motor Vehicles supra is predicated on a warning letter sent to the appellant in December 1967

1/ In Grihalva, A-45-73, a case significantly similar to the case at hand, the penalty imposed by the director and affirmed by the board provided for a 15-day suspension with 14 days stayed for a one-year period of probation.

and signed by the department's deputy director. Whether a warning letter signed by the deputy director is more aggravating in nature than the department's routine letter is a determination we need not make. The letter in question is dated December 1967 and the earliest violation in the accusation resulted from a transaction in June 1971. In our view, because of the many years which elapsed between the two dates, either of two conclusions may be validly reached. On the one hand, as the department would have it, corrective action following receipt of the letter was either deficient or non-existent. On the other hand, however, full and timely corrective action may have been taken and the present violations may well have resulted from new operational and personnel deficiencies. Therefore, in considering all the facts and circumstances in this case, we accord the 1967 letter whatever weight it deserves.

We have before us a case of a dealer who has been in business for forty (40) years in eight (8) different locations with no prior license disciplinary action. Further, he has taken drastic and apparently effective measures to correct deficiencies to insure compliance with the law. Since May of 1973, his "DMV" record has been exemplary. There is no contest as to any of these facts which are contained in the director's findings and which we consider weigh heavily in favor of the appellant.

In light of all the circumstances, actual closing of the appellant's business for a period in excess of one day is not deemed commensurate with the findings.

All of the findings of fact and determination of issues are affirmed. With regards to penalty, for the reasons stated, the New Motor Vehicle Board, pursuant to Sections 3054(f) and 3055 Vehicle Code, 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-993) heretofore issued to appellant, Elmer J. Drew and Joseph C. Drew, doing business as Drew Ford, a partnership, 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:

Appellant, and all of its partners 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 its partners, 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 October 11, 1974.

WINFIELD J. TUTTLE

MELECIO H. JACABAN

ROBERT A. SMITH

PASCAL B. DILDAY

THOMAS KALLAY

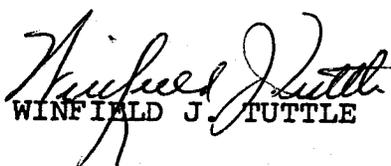
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W. H. "HAL" McBRIDE

A-53-74

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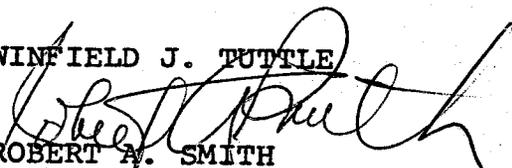
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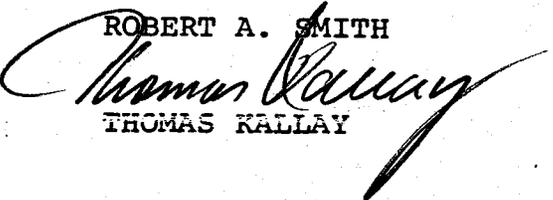
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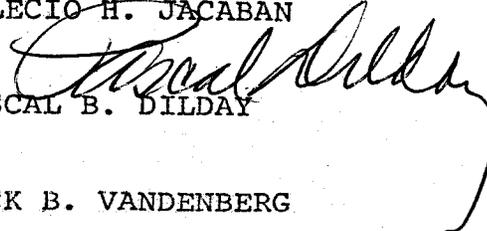
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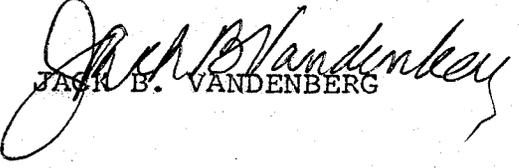
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