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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)

CAMINO DATSUN)
A California Corporation,)

Appellant,)

vs.)

DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)

Respondent.)

Appeal No. A-59-74

FILED: July 30, 1975

Time and Place of Hearing:

10:30 a.m., July 9, 1975
The Center for Legal Advocacy
3200 Fifth Avenue
Sacramento, California

For Appellant:

Harold C. Wright
Brown, Wright & Kucera
A Law Corporation
2600 El Camino Real, Suite 411
Palo Alto, CA 94306

For Respondent:

Honorable Evelle J. Younger
Attorney General
By: Harold W. Teasdale
Deputy Attorney General

FINAL ORDER

Camino Datsun, 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. of the California Government Code.

The Director of Motor Vehicles, adopting the proposed decision of the hearing officer, found that:

1. Appellant failed in 227 instances to mail or deliver the report of sale of vehicles, together with other documents and fees required to transfer the registration of vehicles, within the 20-day period allowed by law.
2. Appellant failed in 141 instances to mail or deliver the report of sale of vehicles, together with other documents and fees required to transfer the registration of vehicles, within the 30-day period allowed by law, having previously paid to the department the \$3.00 forfeiture fee provided for in Vehicle Code Section 4456.5(a).
3. Appellant in 24 instances included as an added cost to the selling price of the vehicle additional registration fees in excess of the fees due and paid to the state.
4. On or about August 6, 1972, appellant sold and delivered to Mark Harland a 1968 Chevrolet which appellant misrepresented to be a 1969 year model, thereby causing Mark Harland to suffer a loss on the transaction.
5. On April 13, 1971, a department warning letter was forwarded to the appellant advising it that its compliance with the vehicle registration laws did not meet acceptable standards. The evidence established, however, that said warning letter was not in fact brought to the attention of

anyone in the management working for appellant.

6. Appellant advertised in the San Jose Mercury and San Jose News a Datsun for a sale price of \$1,725.00 from December 1, 1972, to December 17, 1972. The evidence failed to establish to the necessary degree of certainty that the appellant did not intend to sell the vehicle for that price.
7. Appellant advertised in the San Jose Mercury and San Jose News a Datsun for a sale price of \$1,625, on or about February 14, 1973. The evidence failed to establish to the necessary degree of certainty that the appellant did not intend to sell the vehicle for that price.
8. On or about December 7, 1972, appellant caused Gary T. Dawes to suffer a loss of approximately \$475.00 through fraudulent representations made in connection with the sale of a Datsun.
9. On or about February 14, 1973, appellant caused Morris W. Marshall to suffer a loss of approximately \$525.00 through fraudulent representation in connection with the sale of a Datsun.
10. On February 21, 1973, appellant advertised for sale in the San Jose Mercury and San Jose News, a Datsun, VIN LB110478569, which had been sold more than 48 hours earlier.

11. On December 17, 1974, appellant advertised for sale in the San Jose Mercury and San Jose News, a Datsun, VIN PL510415354, which had been sold more than 48 hours earlier.

The hearing officer made additional findings, which were adopted by the director, as follows:

Appellant introduced evidence which established the following:

1. In 1972 appellant sold 4,589 new and used vehicles, gross sales from all its operations of \$13,657,701. Approximately 85 persons are employed.
2. During the time the advertisements were run in the newspapers as found in Paragraphs 10 and 11 above, human errors had developed in appellant's system of keeping current inventory records, so that the advertised vehicles were lost track of.
3. On the sale of the 1968 Chevrolet as found in Paragraph 4 above, appellant's immature records incorrectly listed it as a 1969 model.
4. In connection with the sales referred to in Paragraphs 4, 8 and 9 above, appellant made prompt appropriate refunds to the customers involved after the Department of Motor Vehicles' investigation revealed the facts.
5. Appellant was very cooperative with the department and its investigators during all phases of their investigation.

The director, adopting the proposed decision of the hearing officer, imposed a penalty as follows:

For the 20-day notice violation, 10 days' suspension; for failure to report in 30 days, 10 days' suspension; for the overcharges, 5 days' suspension; for the misrepresentation as to year of automobile, one-day suspension; for fraudulent representation made in connection with the sale of Datsun, VIN PL510415354, a 15-day suspension; for fraudulent representation made in connection with the sale of Datsun VIN LB110478569, a 15-day suspension; for the violations of advertising for sale of two automobiles which had been sold more than 48 hours earlier, 5 days' suspension each. All the forementioned periods of suspension to run concurrently, for a total period of suspension of 15 days; provided, however, that 10 days of said period of suspension is stayed for a period of one year under the usual terms and conditions of probation.

BASIS OF APPEAL

Appellant bases his appeal on the following specific intentions:

1. The department proceeded without or in excess of its jurisdiction;
2. The department's procedure in the matter is contrary to law;

3. The decision is not supported by the findings;
4. The findings are not supported by the weight of the evidence in light of the whole record reviewed in its entirety, including any and all relevant evidence adduced at any hearing of the board;
5. The determination of penalty, as provided in the decision of the department, is not commensurate with the findings.

This appeal came on for hearing on July 9, 1974. We deem only two issues raised by this appeal to be of sufficient merit to warrant discussion; i. e., the sufficiency of the findings and the propriety of penalty.

As to the first issue, appellant contends that the findings of the hearing officer, and as adopted by the director, are deficient in that they are mere recitals of the statutory language of the pleadings and contain no formal findings of fact. Appellant feels that these recitals do not give sufficient weight to the evidence presented by it in mitigation and rebuttal of the accusations. We agree with the department that the findings comply with the requirements of law. However, we do feel that a more detailed or expanded finding of fact would be a benefit to this board as well as to the appellant.

Further, we are required, by Section 3054, subsection (d), Vehicle Code, to use the independent judgment rule when reviewing

the evidence presented at a hearing (Thiel Motors, Inc. vs. Department of Motor Vehicles, A-33-72, and Ogner Volkswagen vs. Department of Motor Vehicles, A-54-74). Pursuant to this mandate, we have independently reviewed the administrative transcript, and our decision is based upon such review. Any failures, if such did exist, of the director or hearing officer to make specific findings of fact as to any factors in mitigation or in defense, are thereby obviated. Accordingly, we find that appellant's contention is without merit, as the decision and the findings are supported by the weight of the evidence in the whole record.

With regard to the penalty imposed by the director, the board takes notice of appellant's extremely high sales volume. In spite of the nearly 9,000 vehicle sales in 1971 and 1972, the department found no 3-day late reporting violations. The hearing officer found no intentional violations, either in the technical or in the advertising allegations. Also, neither the appellant nor its officers have had prior disciplinary action taken against them. Having duly and carefully considered and weighed the evidence presented during the hearing, the board is disposed to reduce the penalty imposed by the director.

Pursuant to Section 3054, subsection (f) and Section 3055 of the Vehicle Code, the New Motor Vehicle 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-3592) heretofore issued to appellant, Camino Datsun, Inc., are hereby suspended for the following periods:

1. For the violations set forth in Finding III, 5 days, with 4 days stayed.
2. For the violations set forth in Finding IV, 5 days, with 4 days stayed.
3. For the violations set forth in Finding V, 5 days, with 5 days stayed.
4. For the violations set forth in Finding VII, one day, with one day stayed.
5. For the violations set forth in Finding XI, 10 days, with 8 days stayed.
6. For the violations set forth in Finding XII, 10 days, with 8 days stayed.
7. For the violations set forth in Finding XIII, 5 days, with 5 days stayed.
8. For the violations set forth in Finding XIV, 5 days, with 5 days stayed.

All the aforementioned periods are to run concurrently, for a total period of suspension of 10 days, provided; however, that 8 days of said 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 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 the appellant 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 the appellant's license fully restored.

This Final Order shall become effective August 29, 1975.

JOHN ONESIAN

PASCAL B. DILDAY

AUDREY B. JONES

ROBERT A. SMITH

JOHN B. VANDENBERG

WINFIELD J. TUTTLE

A-59-74

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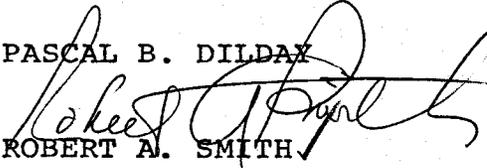
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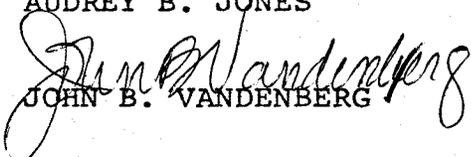
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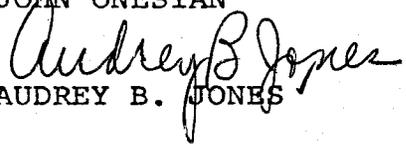
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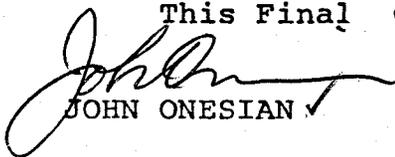
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Camino Datsun VS DMV