

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)	
)	
ARNOLD WIEBE BUICK-PONTIAC-GMC, INC.,)	
)	
Appellant,)	Appeal No. A-62-75
)	
vs.)	FILED: October 3, 1975
)	
DEPARTMENT OF MOTOR VEHICLES)	
OF THE STATE OF CALIFORNIA,)	
)	
Respondent.)	

Time and Place of Hearing: 10:30 a.m., September 10, 1975
Room 4061, 722 Capitol Mall
Sacramento, CA 95814

For Appellant: Marc A. Stefano
Attorney at Law
222 West Shaw, Suite 302
Fresno, CA 93704

For Respondent: Honorable Evelle J. Younger
Attorney General
By: Edna Walz
Deputy Attorney General

FINAL ORDER

Arnold Wiebe Buick-Pontiac-GMC, Inc., a California corporation, enfranchised as a new car dealer, hereinafter referred to as "appellant", appealed to this board from a disciplinary action taken against its 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 63 instances, to give written notice to the department within 3 days after transfer of vehicles.
2. Appellant failed, in 562 instances, to mail or deliver the reports of sale of the vehicles, together with other documents and fees required to transfer the registration of the vehicles within the 20-day period allowed by law.
3. Appellant reported to the department a false date of sale, in 2 instances, and did thereby make a false statement or conceal a material fact in the application for registration of such vehicles.
4. On or about October 16, 1972, to on or about March 15, 1973, appellant employed or delegated the duties of a vehicle salesman to Rocksy Jude Radcliff, who had not been licensed and whose license was not displayed on appellant's premises.
5. Appellant, in 41 instances, included as an added cost to the selling price of vehicles, additional licensing or transfer fees in excess of the fees due and paid to the state.
6. Between August 24, 1972 and November 14, 1972, appellant had in its possession, for resale, a 1970 Opel automobile, license no. 001BCL. The preponderance of the evidence and the reasonable inferences to be made therefrom established that the odometer was set back by appellant's

employee or employees to reduce the mileage indicated by approximately 10,000.

In addition, the director, adopting the hearing officer's proposed decision, made the following findings:

1. The reporting deficiencies above found were, in part, the result of appellant's employment of inexperienced people and numerous employee turnovers that occurred during the period of time herein involved. Appellant has since employed more knowledgeable and experienced personnel for performance of the reporting function.
2. The false dates of sale reported in connection with the 2 vehicles in question resulted from an unauthorized delivery of used cars from an unlicensed dealer by appellant's sales manager, since dismissed, and the subsequent discovery by appellant of such delivery and ratification of the two sales.
3. The use of an unlicensed vehicle salesman resulted from appellant's sales manager's belief that because he was the manager, he need not be licensed. Upon his being informed by department representatives that the law required that he be licensed, Rocky Jude Radcliff made application for and has since received the license.
4. Appellant's overcharges have been refunded and appellant has instructed its employees to avoid overcharging.
5. Appellant has issued orders to its employees prohibiting rollbacks and notifying them that they will be discharged if caught doing it.

6. During the period March, 1972 to January, 1973, appellant corporation was not under the direct supervision and control of its president, Arnold Wiebe. President Wiebe's time and attention were occupied during this period of time with matters related to the kidnapping of his daughter and the trial of those charged with the crime.

The director, adopting the hearing officer's proposed decision, imposed a penalty of 30 days' suspension with 26 days stayed for a period of one year's probation under the usual terms and conditions.

The two issues raised by the appellant on appeal are that, 1) the circumstances contained evidence in mitigation of the charges, and 2) the penalty is excessive.

Appellant contends that the decision of the director does not reflect the evidence presented in mitigation of the charges. In particular, appellant points to the circumstances surrounding the kidnapping of Arnold Wiebe's daughter and the resultant impact upon the dealership by Mr. Wiebe's absence and lack of attention thereto.

In *Bob Frink Chevrolet, Inc. vs. the Department of Motor Vehicles, A-46-73*, the board made the following observation:

"...Section 3050, subsection (d), Vehicle Code, requires the board to use the independent judgment rule when reviewing the evidence (*Thiel Motors, Inc. vs. Department of Motor Vehicles, A-33-72*, and cited cases). Accordingly, our review takes into consideration all of the evidence presented at the hearing, thereby obviating any error, if such did exist, in the hearing officer's failure to make a finding of fact as to some mitigating factor."

It should be noted that the hearing officer found, and the director adopted the finding, that the dealership was not under

the direct supervision and control of Mr. Wiebe during the period of his daughter's kidnapping. Thus, this evidence in mitigation was considered in arriving at the penalty imposed.

With regard to the severity of the penalty imposed by the director, the board is compelled to consider all the aspects of appellant's conduct. Appellant had received two warning letters prior to the filing of the present accusation. Over 1,500 late transfers occurred in the interim (3 years) between the dates of these letters. The appellant had not established, at the time of the administrative hearing before the Department of Motor Vehicles, procedures to record or control the number of late transfer violations.

Even though the evidence does not indicate that Arnold Wiebe had any personal knowledge of, or in any manner condoned, the odometer tampering, he must, nevertheless, assume full responsibility for the acts of his employees and for vehicles in his possession and control. The director, adopting the findings of the hearing officer, found that the preponderance of the evidence and the reasonable inferences to be drawn therefrom indicated that the appellant's employees were involved in the odometer tampering. The board finds sufficient evidence in the record to support this finding.

The above-mentioned violations, as well as the other violations found by the hearing officer and adopted by the director, indicate a careless disregard for the applicable laws regulating motor vehicle sales. The board, therefore, finds that the penalty imposed is entirely appropriate. Any reduction or modification of the penalty would be totally unwarranted.

Having weighed all the evidence in light of the whole record reviewed in its entirety, we determine that all of the findings, as found by the director, are supported by the evidence. The evidence in mitigation was duly considered and the penalty imposed is not excessive. Accordingly, all the Findings of Fact and Determination of Issues relating thereto are affirmed.

This final order shall become effective November 3, 1975.

JOHN ONESIAN

MELECIO H. JACABAN

WINFIELD J. TUTTLE

JOHN B. VANDENBERG

JOHN D. BARNES

A-62-75

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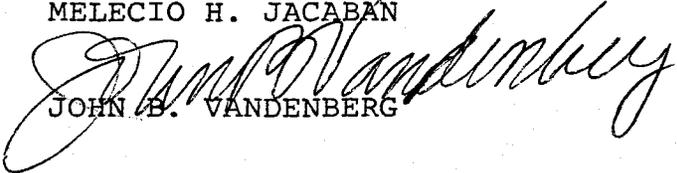
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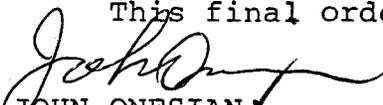
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