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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)	
)	
PARAMOUNT CHEVROLET CO., a)	
California corporation,)	
)	
Appellant,)	Appeal No. A-67-75(2)
)	
v.)	FILED: August 5, 1977
)	
DEPARTMENT OF MOTOR VEHICLES)	
OF THE STATE OF CALIFORNIA,)	
)	
Respondent.)	
)	

Time and Place of Hearing:	9:00 a.m., July 13, 1977
	City Council Chambers
	City Hall
	1685 Main Street
	Santa Monica, CA 90401

For Appellant:	Herbert D. Pearlson, Esq.
	Pearlson & Pearlson
	9744 Wilshire Blvd., Suite 203
	Beverly Hills, CA 90212
	Of Counsel: Bernard W. Minsky, Esq.

For Respondent:	Alan Mateer, Esq.
	Chief Counsel
	Department of Motor Vehicles
	2415 First Avenue
	Sacramento, CA 95818

FINAL ORDER

Appellant, Paramount Chevrolet Company ("Paramount")
is a corporation licensed to do business as a new motor

vehicle dealer in California. A hearing officer found that grounds were established, pursuant to Vehicle Code §11705, to suspend or revoke appellant's dealer license and special plates. The Department of Motor Vehicles ("Department") adopted the findings of the hearing officer as well as the recommendation that appellant's license be suspended for a period of 15 days with 12 days of that suspension stayed for a period of one years probation. Paramount appealed from this decision of the Department. By its order of February 24, 1976, the Board affirmed the decision of the Director of Motor Vehicles in its entirety. Paramount then petitioned the Superior Court for the County of Los Angeles for a writ of mandamus under Code of Civil Procedure §1094.5 to set aside the decision of the Department of Motor Vehicles and the Board's final order. The Superior Court, by judgment entered April 28, 1977, found that with one exception the evidence supported the Board's findings and that the findings supported the Board's determinations and that the penalty assessed by the Board did not constitute an abuse of discretion. The court found that with respect to item 9 of Schedule A no violation of the Rees-Levering Act existed. Judgment was entered granting a preemptory writ of mandate remanding the proceedings to respondent New Motor Vehicle Board to reassess

the penalty in light of the courts findings of fact and conclusions of law

Pursuant to the request of Paramount, further argument concerning the penalty was heard by the Board at its regularly scheduled meeting July 13, 1977, in Santa Monica.

Prior decisions (Tom Coward Ford vs. Department of Motor Vehicles, Appeal No. A-71-76), and intervening legislation, particularly Vehicle Code §11707, indicates that the penalty originally assessed is not commensurate with the findings. Accordingly, the decision of the Department is reversed, and the Department is directed to reconsider the matter in light of this order and existing law, including but not limited to Vehicle Code §11707.

The decision of the Director is reversed.

This Final Order shall become effective August 12, 1977.

THOMAS KALLAY

JOHN D. BARNES

JOHN B. VANDENBERG

JOHN B. OAKLEY

ELVIRA ARMAN-REED

A-67-75

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
)
PARAMOUNT CHEVROLET CO., a)
California corporation,)
)
Appellant,) Appeal No. A-67-75
)
vs.) FILED: February 24, 1976
)
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)
)
Respondent.)
_____)

Time and Place of Hearing:

10:30 a.m., January 14, 1976
City Council Chambers
City Hall
1685 Main Street
Santa Monica, CA 90401

For Appellant:

Herbert D. Pearlson, Esq.
Pearlson & Pearlson
404 N. Roxbury Drive, Suite 613
Beverly Hills, CA 90210

For Respondent:-

Honorable Evelle J. Younger ---
Attorney General
By: Richard M. Radosh
Deputy Attorney General

FINAL ORDER

Paramount Chevrolet Company, a California corporation, enfranchised as a new motor vehicle 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.

After independently reviewing the transcript, the director adopted the proposed findings of the hearing officer in their entirety and found:

1. Appellant failed, in one instance, to give written notice to the department within 3 days of the transfer of the vehicle.
2. Appellant failed, in 308 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 failed, in 21 instances, to mail or deliver the reports of sale of vehicles, together with other documents and fees required to transfer the registration of the vehicles, within the 30-day period allowed by law, having previously paid to the department the \$3.00 forfeiture fee.
4. Appellant, in two 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.
5. Appellant, in 4 instances, delivered vehicles to

purchasers without delivering to them a fully executed copy of the Conditional Sales Contract which contained in a single document all of the agreements of the parties, including any loans appellant had agreed to assist its purchasers to obtain from third parties, the amount of such loan, the finance charges, the total thereof, the number of installments scheduled to repay such loans, and the amount of each installment.

6. Evidence was insufficient to support the contention that appellant did not deliver to Frank Moreno a fully executed copy of the credit application.
7. Appellant failed, in one instance, to refund down payment on an unexecuted Conditional Sales Contract.
8. Evidence did not establish that an advertised vehicle was not intended for sale.
9. Appellant, in one instance, advertised a vehicle for sale when such vehicle was not actually for sale on the licensed premises.
10. Appellant, on April 28, 1972, advertised a vehicle for sale at a total price which did not include all costs to the purchaser, except sales tax, vehicle registration fees, and finance charges.
11. Appellant, in June and July 1972, advertised a vehicle for sale at a total price which did not include all costs to the purchaser, except sales tax, vehicle

registration fees, and finance charges.

12. Appellant, in one instance, advertised a vehicle for sale which vehicle had been sold more than 48 hours before the date of the advertisement.
13. On February 13, 1969, and on April 7, 1971, the department in writing informed appellant of reporting violations and requested that corrective measures be taken.

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

1. Appellant is a large volume new car dealer selling approximately 4,000 cars per year. It has been in the auto business since 1937. There are approximately 120 employees.
2. In September 1973, appellant hired a new office manager experienced in auto sales office management. The new office manager in turn hired a new but experienced DMV clerk in July 1974. Both were specifically employed and directed to reduce the number of reporting violations.
3. Appellant blames the late reporting in part on the ~~failure of lending agencies to properly remit title~~ documents following payoffs by appellant thereby preventing filing reports of sale within the proper time.

4. The violations of the Rees-Levering Act as to conditional sales contracts were occasioned by buyers who wanted the used car immediately but wanted to arrange for their own financing through credit unions and consumer loan agencies. These sales frequently occurred on weekends when such agencies were not open. On other occasions the loan application had to be referred to a loan committee and several days lapsed before approval was granted. In the interim, appellant and buyer executed a one-payment conditional sales agreement pending the placing and processing of permanent financing.
5. Appellant has revised his advertising policies to conform with advertising price regulations.
6. Appellant refunded the \$300 down payment referred to in Finding of Fact VII, but not until the purchaser had filed a small claims court action.

The director, adopting the hearing officer's proposed decision, 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. This results in an actual suspension of 3 days.

~~The appellant based his appeal on the following specific contentions:~~

1. The department has proceeded without or in excess of its jurisdiction.

2. The department has proceeded in a manner contrary to the 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 or penalty, as provided in the decision from the department, is not commensurate with the findings.
6. Amendment, modification, or reversal of the decision.

We deem only three issues raised by this appeal to be of sufficient merit to warrant discussion: (1) the decision is not supported by the findings; (2) 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; and (3) the determination or penalty, as provided in the decision from the department, is not commensurate with the findings.

In its notice of appeal, appellant indicated a desire to augment the record by producing evidence at the board's hearing ~~which in the exercise of reasonable diligence could not have~~ been produced or which was improperly excluded at the administrative hearing.

The appellant was allowed to augment the record by introducing additional oral testimony at the board's hearing. This testimony related to matters largely outside the scope of the present inquiry, as it dealt primarily with personal problems and management difficulties occurring after the date of the department's accusation. Though the board considered these matters, the nature and relevancy of this additional evidence in mitigation is insufficient to justify a modification of the Decision of the Director of Motor Vehicles.

With regard to appellant's contention that the decision of the director is not supported by the findings, and that the findings are not supported by the weight of the evidence, the board has independently reviewed the evidence in light of the entire record. Pursuant to the legislative mandate of Section 3054(d) of the Vehicle Code, the board has utilized its independent judgment to analyze the evidence presented and to arrive at its determination. Applying this rule, the board is satisfied that the decision is supported by the findings and that the findings are supported by the weight of the evidence in light of the whole record reviewed in its entirety. All of the findings of fact and determination of issues are therefore affirmed.

As to the appropriateness of the penalty, we have very carefully considered all the evidence in the record and the matters in mitigation. The appellant has committed numerous

violations of the Vehicle Code and has indicated a lack of concern, until very recently, over the proper discharge of its legal obligations as a licensed new motor vehicle dealer. Any reduction or modification of the penalty would be totally unwarranted.

The Decision of the Director of Motor Vehicles is affirmed in its entirety.

This Final Order shall become effective March 26, 1976.

JOHN ONESIAN

MELECIO H. JACABAN

AUDREY B. JONES

JOHN D. BARNES

JOHN B. VANDENBERG

A-67-75