

2331 Burnett Way
P. O. Box 31
Sacramento, CA 95801
(916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
SENATOR FORD, INC., a)
corporation,)
Appellant,) Appeal No. A-68-75
vs.) FILED: April 8, 1976
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)
Respondent.)

Time and Place of Hearing: 10:30 a.m. February 18, 1976
722 Capitol Mall
Sacramento, CA 95814

For Appellant: James Quirk, Esq.
1722 J Street, Suite 3
Sacramento, CA 95814

For Respondent: Honorable Evelle J. Younger
Attorney General
By: Carol Hunter
Deputy Attorney General

FINAL ORDER

Senator Ford, Inc., a corporation, 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. of the Government Code.

FINDINGS OF DIRECTOR OF MOTOR VEHICLES

Initially, the director did not adopt the hearing officer's proposed decision. After independently reviewing the administrative record, 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 before the end of the third business day after transferring the vehicle.
2. Appellant failed, in three instances, to give written notice to the department before the end of the fifth day after transferring the vehicles.
3. Appellant failed, in 449 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 20-day period allowed by law.
4. Appellant, in 35 instances, included as an added cost to the selling price of the vehicle additional licensing or transfer fees in excess of the fees due and paid to the state.
5. Appellant, in one instance, arranged through an independent finance agency for a loan on behalf of a customer which was used as payment in connection with such vehicle purchase without reflecting the loan transaction on the conditional sale contract, thereby violating Civil Code Section 2982(a).

6. Appellant, in one instance, obtained signatures of the buyers of the vehicles on a conditional sale contract which did not include in a single document true and complete agreement of the parties and thereafter made delivery of the vehicle in violation of Civil Code Section 2982(a).
7. Appellant, in one instance, delivered a vehicle to the purchaser without giving her a copy of the credit application she was required to sign, thereby violating Civil Code Section 2982(a).
8. Appellant, in one instance, represented to the purchasers, Jensen and Christine Kuan, that:
 - (a) Said vehicle was a new car; (b) Said vehicle had never been sold before; (c) The purchasers would be provided with a new car warranty;
 - (d) The base price of the vehicle was \$5,341.Said representations were false or misleading in that: (a) Said vehicle had been previously sold and delivered to Michael and Lynn Warner on or about September 7, 1974; (b) The base price of the vehicle was \$5,216. The purchasers did receive a new car warranty. These false and misleading representations were made by appellant's salesmen in a manner not warranted by the information available

to the salesman and constituted fraud. The purchasers did suffer injury as a result of the fraud.

9. Appellant, in relation to the vehicle described in Finding VIII, knowingly made a false statement that said vehicle was a new vehicle, when in fact said vehicle was a used vehicle within the meaning of Vehicle Code Section 665 in that said vehicle had been sold and delivered to Robert and Lynn Warner. Appellant offers no credible explanation of the attempt to register the vehicle as a new car sale to the Kuan's. Subsequently, appellant did file a corrected application showing the vehicle as used. The Kuan's did not learn until February 1975 that appellant's representations to them as to the vehicle being new were false. At that time, the appellant was well aware that the vehicle had been misrepresented. The appellant attempted to cover up its misrepresentation by prevailing upon Mrs. Kuan to make written acknowledgement that she knew the car was used when purchased. As an inducement to Mrs. Kuan to sign the false acknowledgment, appellant informed her that if she didn't do so appellant would not provide the free service and checkups which she was entitled to receive as purchaser of the vehicle. The

Kuan's refused to make the requested false statement and complained to Ford Motor Company in Michigan. Thereafter, the Kuan's were informed by Ford that they could return the vehicle and receive their money back.

10. Appellant has been in business since September 1971. Volume is approximately 300 units per month. It has had considerable difficulty in obtaining and retaining competent personnel to handle the Department of Motor Vehicles work. Turnover in that job has been frequent. Appellant has made efforts to improve that portion of its operation. When informed by the Department of Motor Vehicles auditor of the overcharges listed in Finding IV, refunds were promptly made. These overcharges were the result of employee error. Appellant uses a system whereby sales personnel calculate the fees during the evenings, weekends, or other periods when the DMV girl is not at work. Appellant now checks papers immediately upon return from the Department of Motor Vehicles and makes prompt refund of any overcharges discovered.

The director amended the hearing officer's proposed decision to provide for the penalty of 21 days' suspension, with 14 days stayed, for a period of one year's probation under the usual

terms and conditions. The hearing officer had imposed a 21-day suspension, with 14 days stayed, for a period of two years' probation. The penalty imposed by the director results in an actual suspension of seven days.

The appellant bases its appeal on all of the grounds stated in Vehicle Code Section 3054. However, the Board has determined that only one of these grounds is of sufficient merit to warrant consideration. This ground is that the penalty imposed by the director is not commensurate with the findings.

Appellant stipulated to the various late transfer violations, as well as the overcharges of license and transfer fees. Appellant offered evidence in mitigation of these charges which was uncontested and which demonstrated that the appellant has had difficulty in retaining qualified personnel to perform DMV work. DMV clerks have remained at the dealership for only three to six months, resulting in significant periods of time spent training new employees. These extended training periods have undoubtedly played a large part in the number of violations.

The Laggert transaction, upon which the three violations of the Rees-Levering Act were based, was never consummated. The Laggert's were unable to obtain financing through their credit union and the appellant unwound the sale shortly after delivery.

The circumstances surrounding the Kuan transaction are of serious import and remain unexplained. Employees of the appellant were found to have engaged in misrepresentations

which caused the purchasers of the vehicle to suffer harm.

It appears the late transfers, overcharges, conditional sale contract violations and the misrepresentation of the Kuan vehicle were occasioned by the conduct of certain employees of the appellant. A direct link to management was not established. However, it is clear that a corporation is subject to license discipline for the negligence or wrongful acts of the officers, agents or employees. As we noted in *Imperial Motors vs. Department of Motor Vehicles*, A-20-72:

"A corporate licensee is responsible for all acts of its officers, agents and employees acting in the scope of their employment. A contrary rule would, of course, preclude meaningful license discipline."

We have duly considered the administrative record and the briefs and arguments of both parties. Further, we have carefully weighed the accusation in light of all of the circumstances and the evidence of record, both in aggravation and mitigation of the violations found to have been established. In our view, the penalty in this case is not deemed to be commensurate with the findings and should be modified. The board is of the opinion that the public welfare would not be served by a seven-day suspension. The circumstances surrounding the appellant's conduct are such that a seven-day suspension would be unduly harsh. A closure for a lesser period of time would be sufficient to demonstrate that the duties and responsibilities of a licensee are not to be taken lightly. A three-day closure would serve as a reminder to

all licensees of their responsibilities and obligations under the Vehicle Code.

Pursuant to Section 3054(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 MADE:

The vehicle dealer's license, certificate and special plates (D-150 and TR-2330) heretofore issued to appellant, Senator Ford, Inc., be and the same are hereby suspended for a period of twenty-one (21) days; provided, however, that the effectiveness of eighteen (18) days of said order of suspension shall be stayed for a period of one (1) year from the effective date of this decision, during which time the appellant shall be placed on probation to the Director of the Department of Motor Vehicles of the State of California upon the following terms and conditions:

Appellant shall obey all the laws of the State of California and all rules and regulations of the Department of Motor Vehicles insofar as said laws, rules and regulations govern the exercise of its privileges as a licensee.

If and in the event the Director of Motor Vehicles shall determine, after giving appellant notice and opportunity to be heard, that a violation of probation has occurred, the director may terminate the stay and impose the stayed portion of the suspension

or otherwise modify the order. In the event the appellant shall faithfully keep the terms of the conditions imposed for the period of one year, the stay shall become permanent and the appellant shall be fully restored to all of its license privileges.

This Final Order shall become effective May 7, 1976.

JOHN ONESIAN

AUDREY B. JONES

JOHN B. BARNES

JOHN B. VANDENBERG

WINFIELD J. TUTTLE