

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
)
BILL ELLIS, INC., dba BILL ELLIS)
FORD,)
)
Appellant,) Appeal No. A-69-76
)
v.)
) FILED: April 8, 1977
DEPARTMENT OF MOTOR VEHICLES OF)
THE STATE OF CALIFORNIA,)
)
Respondent.)
_____)

Time and Place of Hearing:

March 9, 1977, 10:00 a.m.
Council Chambers
City Hall
Santa Monica, CA

For Appellant:

Richard R. Beswick, Esq.
Sprague, Milligan & Beswick
323 W. Court Street, Suite 402
San Bernardino, CA 92401

For Respondent:

Alan Mateer, Chief Counsel
Department of Motor Vehicles
By: Leo Bingham, Esq.
Staff Counsel

FINAL ORDER

I. Procedural Background

Appellant, Bill Ellis, Inc., dba Bill Ellis Ford
("Ellis") is a corporation licensed to do business as a

new motor vehicle dealer in California. The hearing officer found that grounds were established, pursuant to Vehicle Code §11705, to suspend or revoke appellant's dealers 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 90 days, with all but 5 days stayed for a period of one year. Ellis has appealed from this decision of the Department.^{1/}

II. Facts

The findings reflect that on 153 occasions Ellis failed to submit documents showing the transfer of ownership within the time required by the Vehicle Code.^{2/} These violations can be categorized as follows:

A. Pre-1975 Offenses

1. ~~On 104 occasions prior to January 1975 Ellis failed~~ to submit documents showing the transfer of ownership of vehicles sold within 20 days of the date of sale;
2. On 11 occasions prior to 1975 Ellis, having paid a \$3 forfeiture fee, failed to submit the documents showing the transfer of ownership within 30 days after the date of sale;

^{1/}Appellant withdrew his motion to introduce additional evidence at the hearing before the Board. In lieu thereof appellant yielded a portion of his time to former California State Senator William E. Coombs for legal argument.

^{2/}Vehicle Code §§4456, 4456.1, 4456.5. All citations are to the Vehicle Code.

B. Post-1975 Offenses

3. On 38 occasions subsequent to January 1, 1975, Ellis failed to submit the reports of sale, documents and fees showing the transfer of ownership in a timely manner.

C. Failure to Report Sales and Overcharges

4. In addition to the foregoing the hearing officer also found that in three instances Ellis had failed to notify the Department of a sale within 15 days of the date of sale; that in 11 instances he had overcharged fees to the purchaser, and that in 30 instances fees due to the Department were paid late.

Appellant focuses this appeal on the contention that under the Vehicle Code sections in existence prior to January 1, 1975, the Department had no authority to impose discipline for 115 incidents of late filing. Vehicle Code ~~§4456.5^{3/} provided, in its salient portion, that "notwith-~~ standing any other provision of this code, the three dollar (\$3) forfeiture payment provided by this section shall constitute the sole cause of action arising from noncompliance with..." the requirement of filing documents to transfer registration within 20 days after a sale. This section was repealed and replaced by §4456.1 which expressly provides a separate cause

^{3/}Effective 23 Nov 1970; repealed 1 January 1975.

of disciplinary action in addition to any obligations to pay an administrative service fee. Appellant contends that the Department erroneously applied \$4456.1 retroactively.

Ellis also contends that the evidence does not support the findings of the three late reports of sale in that there are two dates stamped on the back of the notices of sale, one in black ink indicating 17 December 1973 and one in red ink showing the date of 31 May 1974. Admitting the 31 May date would be well over the five days required by statute, Ellis contends that the 17 December 1973 date was the actual date of receipt by the Department, and the late processing of these reports was due to Department delay.

All overcharges were refunded or attempts made to refund them on or about March 5, 1974. The Department investigation was carried out January 15 and 16, 1974.

Appellant contends that the penalty awarded by the Department was excessive in view of the technical nature of the violations charged, and the lack of evidence to support the findings that violations had occurred.

III. Law & Discussion

Vehicle Code §4456.5 provided that upon payment of a forfeiture fee of \$3 to the Department a dealer would be allowed an additional ten days to present to the Department an application and documents in acceptable form. Conceding

that the \$3 forfeiture fee on 11 items was timely paid, the Department, however, charged that Ellis did not submit documents within 30 days of the date of sale. The Board has already indicated in Suburban Ford v. DMV, A-35-73, at page 12 that "viewing this section as it applies to subparagraph 4, the timely payment of the \$3 forfeiture fee only precludes licensee discipline for failing to file within 20 days but does not preclude action for failing to file within 30 or 40 days as the case may be". This section merely provides a 10-day extension upon performance of the statutory condition precedent of payment of a \$3 forfeiture fee.

On the 104 occasions prior to 1975 that the Department charged Ellis with failing to report within 20 days from the date of sale, there is no showing that the requisite \$3 fee was paid to gain the ten day statutory extension. The only indication that this fee was paid on these transactions is an employee's testimony that she knew of no instances when the fees were not paid. Her testimony on this issue is not convincing since payment of the forfeiture fees was not solely her responsibility, and since none of the exhibits which substantiate the 104 late reports give any indication that the \$3 fee was paid. This contrasts with Exhibit 6 documents relating to items 101-110 which note the payment of this fee. Since payment of this fee is a statutory condition to the dealers obtaining an additional 10 days in which to file

the required reports and documents, the burden of showing that this forfeiture fee was paid would fall on Ellis.

The amended accusation clearly shows the Department correctly limited the applicability of \$4456.1 to those vehicles sold after its effective date of January 1, 1975.

In each of the three late reports of sale the Board notes that the black ink date of 17 December 1973 appears on both the front and back of the Notice of Transfer in close proximity to a black ink stamped "Bill Ellis Ford". The 31 May 1974 date appears in red only on the back of the Notice of Transfer. The 31 May 1974 date is in the record, under oath, as the date of receipt of those notices by the Department.

The Board is aware of the factors recited by appellant as reasons for the delay by the dealership in filing reports as required by the Vehicle Code. Due care on the part of appellant would have remedied these defects. This care would be expected when considering Ellis' prior two-year probationary period based on similar violations.^{4/} In that action there were 400 instances of late filing of documents by Ellis. In addition, Appellant, in 17 instances, furnished false information to the Department. The Board indicated at that time that "... the exercise of due care on the part of appellant would have remedied the defects in appellant's reporting procedures ..."^{5/} Were it not for this prior

^{4/}Appeal No. A-2-69

^{5/}Appeal No. A-2-69 at 13.

offense we would be inclined to think a five day closure to be too severe. The Board, however, views the reoccurrence of these offenses most seriously. Considering this prior conduct we find that a five day closure is fair and reasonable. However, in light of the prior imposition of discipline, and the disregard of the reporting requirements of the Vehicle Code, which the repetition of such offenses demonstrates, the length of the probationary period is considered to be inadequate. Accordingly, the penalty is modified pursuant to Vehicle Code §3055 to the extent that the probationary period shall be for a period of two years under the same terms and conditions as imposed by the Department.

The Decision of the Director is affirmed as modified.

This Final Order shall become effective May 9, 1977.

THOMAS KALLAY

JOHN D. BARNES

AUDREY B. JONES

JOHN B. VANDENBERG

JOHN B. OAKLEY

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