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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
)
WILSHIRE VOLKSWAGEN, a)
California Corporation,)
)
Appellant,) Appeal No. A-74-76
)
v.)
) FILED: March 17, 1977
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA)
)
Respondent.)
_____)

Time and Place of Hearing:

January 12, 1977, 10:00 a.m.
Room 4061, 722 Capitol Mall
Sacramento, CA 95814

For Appellant:

George E. Leaver, Esq.
Getz, Aikens & Manning
5900 Wilshire Blvd., Suite 770
Los Angeles, CA 90036

For Respondent:

Alan Mateer, Esq.
Chief Counsel
Department of Motor Vehicles

FINAL ORDER

I. Procedural Background

Appellant, Wilshire Volkswagen ("Wilshire") is a corporation licensed to do business as a new motor vehicle dealer in California.

The hearing officer found that the Department of Motor Vehicles ("Department") established grounds, pursuant to Vehicle Code §11705, to suspend or revoke appellant's dealers license and special plates. The Department adopted the decision of the hearing officer and the recommendation that Wilshire's license be suspended for 20 days all but three days, stayed for a probationary period of one year. Wilshire has appealed from this decision of the Department.

II. Facts

The findings upon which the Department has imposed discipline are as follows: Wilshire fraudulently represented four used vehicles as new,^{1/} and fraudulently represented four vehicles to be dealer demonstrators instead of disclosing to purchasers that the vehicles had been previously sold at retail. Appellant was also found to have overcharged license fees on three vehicles, failed to report the sale of one vehicle to the Department within 40 days, and displayed 10 vehicles without assigned license plates.

The main thrust of this appeal is Wilshire's contention that since there was no evidence of fraudulent intent by the dealer, nor damage to the consumer, discipline should not have been imposed. In support of its position, Wilshire points

^{1/} "A 'used vehicle' is a vehicle that has been sold and operated on the highways of this state, or has been registered with the department ... or unregistered vehicles regularly used or operated as demonstrators in the sales work of a dealer ..." Vehicle Code §665.

to the systematic finalization of sales by its assistant sales manager, which it contends was designed to prevent any misunderstanding or misrepresentation, prior to the purchase of a vehicle from appellant. In accordance with its "system" Wilshire's salesman would "sell himself, the car and the company,"^{2/} prepare a worksheet automobile sales agreement, and then refer the customer to an assistant sales manager. The assistant sales manager would fill out the contract and report of sale and finalize the purchase of the vehicle.

The flaw in the "system", pragmatically demonstrated by the record, is that the salesman had no way of knowing the prior history of a specific vehicle without access to the stock records. Since neither license plates nor reports of sale were placed on these vehicles as required, the customer could not have recognized that these vehicles were used. This "system" only invited explicit or implicit misrepresentation by the salesman, with the assistant sales manager merely finalizing the deal.

III. Law & Discussion

The term fraud or deceit as used in Vehicle Code §11705 includes "the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true" to induce another party

^{2/} Appellant Opening Brief, page 7, lines 25-26.

to enter into a contract.^{3/} The assertion that there was no intent to deceive is therefore not dispositive of the existence of fraud. Fraud is a broad concept, which easily includes a "system" by which a purchaser is induced to enter a contract in reliance upon information which is not true, even where there is no specific intent to deceive. "Good faith" bargaining is precluded when the salesmen are permitted to make representations without knowing the history of the vehicle.

The Vehicle Code violations were established when the salesmen represented to the purchaser that a used vehicle he ultimately purchased was a new vehicle or demonstrator, and these vehicles were actually purchased without the misrepresentation having been dispelled. These misrepresentations were avoidable simply by requiring the salesman to check the vehicle stock card before negotiating with a prospective purchaser. The record, through customer testimony, clearly supports the finding that these misrepresentations had not been corrected prior to purchase.

Disciplinary grounds under §11713(a) and (d) are established without regard to whether damage or loss is suffered by the purchaser. Injury is shown, however, since the consumers suffered a loss in bargaining power and would not have purchased these vehicles at the price paid if they had known the truth.

^{3/} Civil Code §1572(2)

The Board, therefore, finds that the penalty as assessed by the Department of Motor Vehicles is commensurate with the findings and supported by the evidence.

The decision of the Department is sustained.

This final order shall become effective April 16, 1977.

THOMAS KALLAY

JOHN D. BARNES

JOHN B. VANDENBERG

AUDREY B. JONES

JOHN B. OAKLEY

ELVIRA ARMAN-REED

A-74-76