

1401 - 21st Street
Suite 407
P. O. Box 31
Sacramento, CA 95801
(916) 445-1888

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
BOB CURTIS OLDSMOBILE, INC.,)
Appellant,) Appeal No. A-76-76
v.) FILED: July 14, 1977
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)
Respondent.)

Time and Place of Hearing:

June 24, 1977, 1:30 p.m.
Room 4061, 722 Capitol Mall
Sacramento, CA 95814

For Appellant:

Harry I. Sky, Esq.
Hodge & Hodges
1801 Century Park East, Suite 1700
Los Angeles, CA 90067

For Respondent:

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

FINAL ORDER

I. Procedural Background

Appellant, Bob Curtis Oldsmobile, Inc. ("Curtis") 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 dealer license and special plates. The Department adopted the decision of the hearing officer and the recommendation that Curtis' license and special plates be revoked with the effectiveness of that revocation stayed for a probationary period of two years upon the condition that the dealer license and special plates be suspended for ten days. Upon reconsideration the director of the Department modified the penalty imposed to the extent that the actual suspension of dealer license and special plates was reduced to seven days. Curtis has appealed from the decision of the Department imposing sanctions.

II. Facts

The findings upon which the Department imposed discipline are as follows: Curtis fraudulently represented a used vehicle as new on 1 occasion; on 7 occasions represented used vehicles as demonstrators; on 7 occasions overcharged fees; fraudulently represented to purchaser that rescission of purchase would breach the contract; on one occasion made a false statement to the Department and on one occasion sold an advertised vehicle at higher than the advertised price. Appellant bases this appeal on the contention that: (1) the Department acted in excess of its jurisdiction; (2) the Department has proceeded in

a manner contrary to the law; (3) the findings are not supported by the weight of the evidence; and (4) the determination of penalty as provided by the Department is not commensurate with the findings.

Prior to Departmental review Curtis was placed on notice by the Attorney General that an investigation would be conducted. The Department initiated its review only after receiving a letter from the California Attorney General's office concerning Curtis' operation, as well as a consumer complaint. The ensuing review comported in all respects with administrative due process.

Curtis carried used vehicles on his inventory as demonstrators to take advantage of General Motors extended warranty and a difference in the flooring rate. These vehicles were not demonstrators but rental units, or loaners to preferred persons. To facilitate this use of these vehicles Curtis purchased personalized license plates, BCO-1 through BCO-14. Upon removing these vehicles from rental or loaner service the special plates were removed and the vehicle was placed on the dealer lot. A "shipping order", similar in appearance to the manufacturer's suggested retail price sticker required on all new cars, was placed in the windows of these vehicles. As a result of these practices salesmen had no way of knowing the specific history of these vehicles. A salesman could check with

the sales office to determine the history of the vehicle. However, appellant admits that salesmen could easily think that these vehicles were unregistered demonstrators, especially since the vehicle would be placed on the lot without plates. Mr. Curtis himself indicates that the unwound vehicles were "returned to our new car inventory."

Appellant now labels cars as "used" with a sticker to preclude salesmen or customers from mistaking previously sold or registered vehicles as a new vehicle. Appellant is still using the BCO plates although he intends to phase them out as having a tendency to obfuscate the true history of the vehicle.

Appellant contends that the overcharging of transfer fees was the result of a misinterpretation of the law. Appellant believed these fees could be prorated to the subsequent purchaser of a vehicle registered to Curtis to enable appellant to recoup fees paid. This mistaken belief was fostered by the advice of the dealership's "DMV girl" who had so informed Curtis. After the investigation, refunds of overcharges were made in two of the seven instances. However, at the time of the hearing refunds had not been made to the other five overcharged consumers.

III. Law and Discussion

Appellant raises the defense of entrapment as proper against an administrative body, especially one that has both trial and punitive powers. However, even while making this

argument, appellant concedes that entrapment did not occur in this case. Appellant additionally argues that an illegal search was conducted of his business. The facts wholly fail to support this contention. In this connection it should be noted that Curtis consented to all aspects of the review which necessarily included an examination of his books and records.

The use of "special" personalized plates, the placement of used vehicles on the new car lot and especially the placement of the "shipping orders" on the windows of these vehicles gave them the appearance of being new. The combination of these factors facilitated misrepresentation to the ultimate purchasers. If the salesmen were easily misled, the consumer was without doubt misled.

Curtis bases his argument in mitigation on the relatively short period of time he has been a dealer, as well as on the Department's intention to "get" him. Yet, Mr. Curtis himself was not a neophyte in the automobile business. He was the general manager of an automobile dealership prior to becoming a dealer himself. The fact that Mr. Curtis was personally involved in at least two of the transactions leading to this accusation, and in fact fostered the misrepresentation to those consumers, is of particular importance in determining that the penalty as assessed by the Department is appropriate.

The decision of the Director is affirmed.

This Final Order shall become effective August 12, 1977.

THOMAS KALLAY

JOHN D. BARNES

JOHN B. OAKLEY

ELVIRA ARMAN REED

JOHN B. VANDENBERG

A-76-76