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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
)
FILLMORE MOTORS, INC.,)
)
Appellant,) Appeal No. A-77-77
)
vs.)
)
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)
)
Respondent.)
_____)

Time and Place of Hearing: February 9, 1978, 10:00 a.m.
722 Capitol Mall, Room 4061
Sacramento, California 95814

For the Appellant: Lyman R. Smith, Esq.
Romney, Smith & Drescher
137 N. 10th Street
Santa Paula, California 93060

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

FINAL ORDER

I. Procedural Background

Appellant Fillmore Motors ("Fillmore") 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 section 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 Fillmore's license be suspended for a total of 161 days with that suspension stayed for a probationary period of two years with 15 days actual suspension imposed. Fillmore has appealed from this decision of the Department.

II. Facts

The findings upon which the Department imposed discipline upon Fillmore are as follows:

1. Five instances of violation of Civil Code section 2982, et seq., in failing to comply with the requirements of a conditional sales contract and refusing to refund a down-payment;

2. During the period August 8 to August 19, 1975, publishing misleading ads, relating to six vehicles;

3. Four occasions misrepresenting vehicles as later model years than they were in fact (a 1971 as a 1972 and three 1973's as 1974's);

4. On two occasions selling advertised vehicles at higher than the advertised price without disclosing to the purchaser the advertised price;

5. On one occasion refusing to sell a vehicle at the advertised price;

6. Selling a used vehicle as new on one occasion;

7. On two occasions advertising cars not available at the dealership;

8. On two occasions advertising vehicles without including a license or vehicle identification number;

9. On two occasions representing in advertisements that vehicles had only one prior owner when in fact those vehicles had more than one prior owner;

10. One occasion of submitting a false certificate of non-operation to the Department;

11. One instance of reporting a false date of first operation to the Department;

12. Two occasions of submitting checks to the Department for which there were insufficient funds;

13. Two occasions of failing to report transfer of title within 20 days to the Department;

14. One occasion of failing to give written notice of transfer to the Department within 5 days;

15. One instance of operating a temporary branch at Dodger Stadium without a license; and

16. One occasion employing an unlicensed salesman.

The violations listed in subparagraphs 1 and 15 relate solely to recreational vehicles. Two of the four model year misrepresentations in paragraph 3 relate to recreational vehicle transactions.

Appellant bases his appeal on the statutory grounds that: the decision is not supported by the findings; the findings are not supported by the weight of the evidence; and the penalty as provided by the decision of the Department is not commensurate with the findings. Appellant does admit, however, having made

numerous errors and committing some wrongdoing. Appellant contends that the basis for the problem was its inexperience and "spread too thin" management. Appellant therefore suggests that a meaningful suspension be imposed but stayed and that it be supervised by the Department during the period of the stay so that deficiencies at the dealership may be corrected. In the alternative, appellant suggests a monetary penalty with a similar probationary period. It is clear from appellant's argument that the thrust of its appeal is that the determination of penalty is not commensurate with the findings as made.

The decision promulgated by the Department provides a total of 125 days suspension for violations not involving recreational vehicles, and a total of 36 days suspension for violations involving recreational vehicle transactions. It is unclear what portion of the resulting two year probation period and the 15 day suspension is attributable to violations of the Vehicle Code relating to recreational vehicles.

III. Law and Discussion

Vehicle Code section 3051 provides in its relevant part: ". . . the provisions of this chapter shall not apply to transactions involving . . . recreational vehicles as defined in section 18010.5 of the Health and Safety Code. . . ."

As noted the violations in subparagraphs 1, 3, and 15 above are violations relating to recreational vehicle transactions.

The specific exclusion of transactions involving recreational vehicles from the jurisdiction of the Board precludes the Board from considering the decision of the Department as it relates to recreational vehicles. The Board is, however, charged with considering all other matters raised by this appeal. To the extent that the record does not contain a finding allocating the penalty between the recreational vehicle violations and the other violations properly before the Board, the decision regarding the penalty is not supported by the findings (Veh. Code § 3054, subparagraph (c)). The effect of the absence of such a finding is to preclude a meaningful review of the penalty assessed for violations of the Vehicle Code which fall within the jurisdiction of the Board.

Accordingly, the decision is reversed and the matter is remanded to the Department with the direction that the Department make and enter a finding which reflects the penalty which is based on violations of the Vehicle Code over which the Board has jurisdiction. The Department is further directed to enter a decision assessing a penalty, if appropriate, which is based on violations of the Vehicle Code over which the Board has jurisdiction.

Nothing in this decision shall be construed to have deprived the Department of its statutory right and obligation to assess an appropriate penalty for violations of the Vehicle Code to the extent such violations relate to recreational vehicles. As noted, the Board has no jurisdiction to review the decision of the Department concerning such violations.

This final order shall become effective April 18, 1978.

Melecio H. Jacaban
MELECIO H. JACABAN

ELVIRA ARMAN REED

JOHN B. OAKLEY

JOSEPH TREJO

RUDY A. PEREZ

KATHLEEN O. TURNER

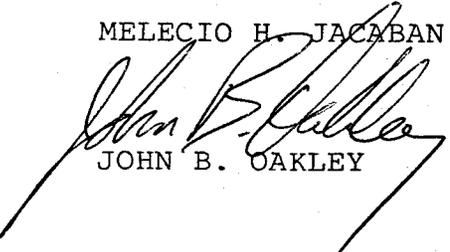
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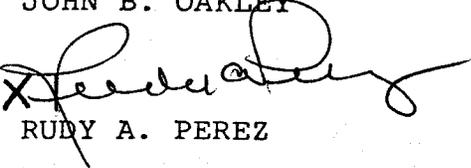
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ELVIRA ARMAN REED

A handwritten signature in cursive script, appearing to read "Elvira Arman Reed", written over a horizontal line.

JOSEPH TREJO

JOHN B. OAKLEY

RUDY A. PEREZ

KATHLEEN O. TURNER

FLORENCE POST

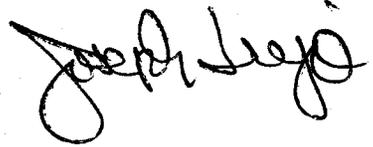
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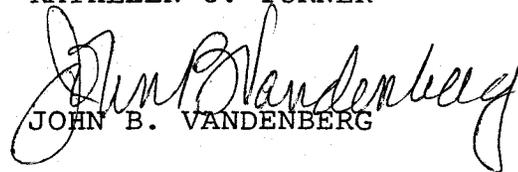
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