

1 NEW MOTOR VEHICLE BOARD
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

11	PITTSBURG FORD, INC.)	Appeal Number A-98-86
12	Appellant,)	CONCURRING AND DISSENTING
13	vs.)	OPINION
14	DEPARTMENT OF MOTOR VEHICLES)	
15	OF THE STATE OF CALIFORNIA,)	
16	Respondent.)	

17
18 INTRODUCTION

19 1. On April 10, 1986, the Department of Motor Vehicles,
20 ("Department"), filed a formal accusation against Pittsburg Ford
21 Inc. ("Appellant") for alleged violations of the California
22 Vehicle Code and Title 13 of the California Administrative
23 Code. A hearing on the matter was held before Ruth S. Astle,
24 Administrative Law Judge, Office of Administrative Hearings, in
25 San Francisco, California on May 1, 2, 5, 6, 1986 and June 19,
26 1986. On July 3, 1986, the Administrative Law Judge submitted a
27 proposed decision to the Director of the Department pursuant to
28 which the Appellant's occupational license and special plates

1 were revoked. The revocation was however stayed, subject to
2 specified terms and conditions of probation. One of the terms
3 and conditions of probation was that a representative of Ford
4 Motor company actively participate in the management of the
5 dealership on a day-to-day basis. The proposed decision also
6 imposed an actual suspension of Appellant's license for a period
7 of seven (7) days. The Administrative Law Judge's proposed
8 decision was adopted by the Director of the Department on July
9 11, 1986.

10 2. On August 15, 1986, Appellant filed an appeal with the
11 New Motor Vehicle Board ("Board") pursuant to section 3052 of
12 the California Vehicle Code.

13 3. Briefs were submitted to the Board by the Appellant and
14 the Department. The Appellant requested and was granted
15 permission to present additional evidence before the Board. A
16 hearing was held before the Board on January 13, 1987, at which
17 time the Board received further evidence and heard oral
18 arguments.

19 4. On February 23, 1987, the Board issued a Final Order
20 which contained additional and specific findings of fact which
21 included a finding that LaRoy Doss, the president of Pittsburg
22 Ford, had actual knowledge of the fraudulent practice of
23 altering invoices which had been going on at the dealership.
24 The Board further found that Doss not only had knowledge that
25 the altered invoices were being used to consummate sales but
26 also had access to them. The Board found specifically that, on
27 at least one occasion, Doss had possession of an altered invoice
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1 and in another occasion he requested that he be brought an
2 altered invoice while dealing with a customer.

3 5. The Board's final order also contained a finding that
4 it was common knowledge among the employees of Pittsburg Ford
5 that invoices were being systematically altered and fraudulently
6 used to consummate sales. Furthermore, it was found that
7 Pittsburg regularly advertised "Invoice Sales" and that the
8 total number of deceived buyers was impossible to determine.
9 Moreover, the Board found that the Department's investigation
10 represented approximately two months of the two year period
11 during which Appellant was engaged in altering and utilizing
12 altered invoices. The Final Order of the Board also contained a
13 finding that Appellant had used the altered invoices in
14 connection with the sale of 15 vehicles to U. S. Fleet Leasing,
15 Inc.

16 6. The Board modified the penalty imposed by eliminating
17 the terms of probation and affirmed the Department to a
18 revocation of Appellant's occupational license and special
19 plates. The Board, in consideration of the innocent employees
20 and the community, gave the owners of Pittsburg Ford one year to
21 either sell the dealership or otherwise dispose of their
22 interests therein.

23 7. After issuance of the Board's Final Order, Appellant
24 filed a Petition for Writ of Administrative Mandamus in the
25 Sacramento County Superior Court. On October 27, 1987, the
26 court issued its decision in this matter which held that the
27 Board's findings and the assessment of the penalty of revocation
28 were supported by the record. Specifically, the Court held

1 "Petitioner has pointed out the mitigating factors, but the
2 Board could find on this record that Doss was such a poor
3 manager as to necessitate an outright revocation of the
4 petitioner's license." (page 25, line 19 through 22) and "the
5 difference (in the Department's and the Board's findings of
6 whether or not Doss had actual knowledge) is not significant,
7 because both the ALJ and the Board had sufficient evidence to
8 revoke." (page 28, line 13 through 14). The court did however
9 hold that the Board committed error in including in its final
10 order a finding with respect to the 15 U. S. Fleet Leasing, Inc.
11 sales which were not originally charged by the Department in its
12 accusation. Accordingly, the court remanded the matter to the
13 Board for the sole purpose of reconsidering the penalty to be
14 imposed without considering the 15 uncharged violations of the
15 Vehicle Code. The court's remand order to the Board was narrow
16 and specific. The court did not instruct the Board to
17 reconsider the findings of fact with respect to the actual
18 knowledge of Mr. Doss, or the fact that the practice of
19 systematically altering invoices and using altered invoices in
20 the sale of vehicles was common knowledge among the employees of
21 Pittsburg Ford. Quite the contrary, the court found that there
22 was ample evidence in the record to support the Board's findings
23 of fact with respect to these issues.

24 8. On April 14, 1988 the Board met and reconsidered the
25 penalty in this matter pursuant to the order of remand from the
26 Superior Court. The decision of the Majority of the Board was
27 to impose the penalty of revocation of Appellant's occupational
28 license, but to stay the revocation and place Appellant's

1 license on probation for a term of five (5) years, subject to a
2 seven-day actual suspension and the standard terms and
3 conditions of probation which are normally imposed by the
4 Department. The Majority did however, impose an additional term
5 of probation that Appellant retain an automotive advisory
6 service to conduct a regular review of the transactions,
7 advertising and personnel conduct of the dealership. The
8 Majority decision removed from the Board's order any reference
9 to the requirement that Ford Motor Company participate actively
10 in the management of the dealership.

11 We concur in the findings as contained in the Order of the
12 Board After Remand. We must express our concerns as to the
13 propriety of the conduct of certain of our colleagues in the
14 decision of this case and we dissent in regard to the penalty
15 imposed.

16 DISCUSSION

17 18 1. The Motion to Disqualify filed by the Department of Motor Vehicles.

19 Prior to the Board meeting at which this matter was
20 reconsidered upon remand from the Superior Court, the Department
21 filed a challenge to the participation of a Board member. The
22 Department's challenge was based upon the allegation that this
23 particular Board member was biased against the Department due to
24 the fact the Department has filed accusations against his
25 occupational license as well as the fact that he was represented
26 in those matters by the same attorney who originally represented
27 Appellant in this matter. Although two members of the Board
28 voted to grant the Department's motion, a majority of the Board

1 voted to deny the motion on the merits. However, regardless of
2 whether there was a sufficient basis for denying the motion, the
3 issue is not whether the Board member was in fact capable of
4 rendering an impartial decision, but whether his decision will
5 be perceived to have been impartial and unbiased. We believe
6 that although the Majority of the Board voted not to grant the
7 motion to disqualify, a Board member challenged under such
8 circumstances should on his own motion recuse himself to prevent
9 any appearance of impropriety from arising.

10
11 2. Participation in the voting by Board members who were
12 not fully informed.

13 This matter was first before the Board on January 13, 1987
14 at which time the Board took additional evidence and heard oral
15 arguments. Some Board members were not present at that hearing
16 and, as a result, did not have the opportunity to evaluate
17 personally the credibility of the testimony. Further, some
18 Board members did not request nor did they have the opportunity
19 to review the original record of the proceedings before the
20 Department or the record of the proceedings before the Board at
21 its meeting of January 13, 1987. Nonetheless, these Board
22 members chose to participate in the proceedings on April 14,
23 1988.

24 The Order of Remand from the Superior Court indicated that
25 there was ample evidence to support the Board's prior findings
26 that Mr. Doss had actual knowledge of the fraud being
27 perpetrated, and the matter was remanded back to the Board only
28 to reconsider the penalty to be imposed without taking into

1 account uncharged violations. Some Board members, however,
2 proceeded to reopen that which had already been decided by the
3 Board and not disturbed by the Superior Court, that is, whether
4 Mr. Doss had actual knowledge of the fraud. This issue had been
5 put to rest and was not before the Board. Even if it were,
6 these Board members should have deferred to the decision of
7 those members who were present at the prior proceedings and
8 either accepted the findings as conclusive or recused themselves
9 from participation entirely. This is especially so considering
10 that they had no familiarity with the prior record.
11 Participation under these circumstances was not only
12 procedurally improper but certainly cannot be described as
13 reaching a decision on the facts and merits of the case. An
14 individual's decision, not being based on the record, leads one
15 to conclude that his decision was personally motivated. Even if
16 neither of these conclusions is accurate, the perception of
17 arbitrariness or outside influence exists and such Board members
18 were obligated to refrain from participating in order to avoid
19 any perception of impropriety.

20 Similarly, in the event that any Board member, either
21 accidentally or intentionally, should obtain information
22 concerning a dispute before the Board from a source other than
23 the administrative record, testimony, or argument presented
24 directly to the Board, then, in order to avoid even the
25 appearance of impropriety, that member should voluntarily recuse
26 himself from the discussion and decision of the matter.

27 / /

28 / /

1 3. The Department of Motor Vehicles was not given notice that
2 oral arguments would be permitted at the Board meeting on April
3 14, 1988.

4 The Appellant and amicus curiae had requested permission to
5 present oral arguments at the Board meeting scheduled for March
6 22, 1988. All parties to this matter were informed that oral
7 arguments would not be permitted. At the Board meeting, the
8 parties were permitted to address the Board informally.
9 However, the Majority expanded this opportunity to allow counsel
10 for Pittsburg Ford to present oral argument. Counsel for the
11 Department, although present, had not been informed that this
12 would be permitted and was thus not prepared to argue the merits
13 of this appeal. Therefore, the procedure utilized by the Board
14 with respect to permitting oral arguments denied the Department
15 of the opportunity to present its position effectively with
16 respect to the issue of the penalty to be imposed. Again, the
17 perception is one of unfairness in the Board's procedure.

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19 4. The reduction in the penalty imposed cannot be justified or
20 reconciled.

21 The Majority of the Board has decided that Pittsburg Ford
22 engaged in intentional fraud, which continued over a long period
23 of time and as part of a deliberate premeditated scheme, done
24 with full knowledge of the dealer principal, condoned by the
25 dealer principal, participated in by the dealer principal, and
26 resulting in loss to members of the public. We concur in these
27 findings. They are the same findings that were made by the
28 Majority of the Board in its Final Order of February 23, 1987.

1 The Majority's decision after remand made no changes as to
2 any of the findings of fact, other than to exclude those
3 findings of violations which were not originally charged by the
4 Department in its accusation. The Board's original findings
5 were not disturbed by the order of remand from the Superior
6 Court. To the contrary, the Board's findings were all upheld by
7 the Superior Court as being supported by ample evidence.
8 Nonetheless, the Majority now holds that such conduct as
9 described above is not sufficient reason to revoke a dealer's
10 license.

11 The penalty meted out by the Majority on remand was merely a
12 stayed revocation with seven (7) days suspension and 5-year
13 probation of the occupational license, which amounts to
14 essentially the same penalty imposed by the Department's order.
15 The penalty imposed by the Board is nothing more than a slap on
16 the hand. It is also slapping a hand that but for getting
17 caught would still be pilfering the pockets of the public.

18 The Majority decision communicates the message to the
19 industry and the public that the Board protects its own, not the
20 taxpayers. It creates a tarnished precedent for future cases
21 before the Board.

22 Lastly, the decision of the Majority cannot be justified in
23 that it is a blatant example of unequal treatment of those who
24 appear before the Board. An allegation of inconsistency in
25 imposing discipline has already served as a basis for a prior
26 reversal by an appellate court of a Board order.

27 The inescapable inference to explain the refusal of the
28 Majority to impose a penalty commensurate with the misconduct

1 found to have occurred is that the members of the Majority
2 permitted political, social, or personal factors to interfere
3 with the exercise of good judgment.

4 Accordingly, we concur with the Majority of the Board with
5 respect to the findings of the Board as contained in the Final
6 Order After Remand, but we dissent with the Majority in regard
7 to the penalty imposed. The appropriate penalty in this matter
8 is revocation of the occupational license of Appellant.

9
10 Dated: *May 12, 1988*

Florence S. Post

FLORENCE S. POST
President

11
12
13 Dated: May 12, 1988

Frank N. Ricchiazzi

FRANK N. RICCHIAZZI
Member

14
15
16 Dated: May 12, 1988

Liucija Mazeika

LIUCIJA MAZEIKA
Member

17
18
19 Dated: *May 19, 1988*

John B. Vandenberg

JOHN B. VANDENBERG
Member

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CERTIFIED MAIL

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7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD

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10 In the Matter of the Appeal of)
11 Pittsburg Ford, Inc.,) Appeal No. A-98-86
12 Appellant,)
13 vs.) FINAL ORDER
14 Department of Motor Vehicles) AFTER REMAND
15 of the State of California,)
16 Respondent.)

17 1. This matter came before the Board as a result of an
18 Order of Remand issued by the Honorable Horace E. Cecchettini,
19 Judge of the Superior Court in and for the County of
20 Sacramento. The Order of Remand commands the Board to review
21 the penalty imposed by the Board's order of February 23, 1987,
22 without reference to the offenses that were not charged by the
23 Department of Motor Vehicles in its accusation.

24 2. In accordance with the Order of Remand, the Board
25 reconsidered the matter at its meeting of April 14, 1988. The
26 Board's Final Order of February 23, 1987 is hereby adopted in
27 its entirety and incorporated herein by reference except for
28 the following modifications:

1 A. Deleted is the sentence that begins "The Board
2 finds that in ..." on page 5, line 25 through page 6, line 14.

3 B. Paragraph 11(D), page 6, is modified to read: "The
4 amount by which invoices were raised ranged from \$100 to
5 \$1,000 with the majority being raised by \$1,000.

6 C. Paragraph 14, starting on page 8, is amended to
7 read as follows:

8 14. After consideration of all the evidence in the
9 record of the Department, the evidence admitted on January
10 13, 1987 at the hearing before the Board, but excluding the
11 evidence relating to uncharged offenses, and including the
12 briefs and oral arguments, it is hereby ordered that:

13 A. The decision of the Department is
14 amended to incorporate the findings and
15 determinations of the Board as stated herein.

16 B. The Department's Order of Revocation
17 is amended to read as follows:

18 (1.) Dealer's license and special plates
19 No. 2731 issued to Pittsburg Ford, Inc., a
20 corporation, are hereby revoked. However, a
21 probationary vehicle dealer's license and
22 special plates shall be issued to Pittsburg
23 Ford, Inc. subject to the following terms and
24 conditions:

25 (a) Pittsburg Ford, Inc. shall obey
26 all laws, rules, and regulations
27 pertaining to the exercise of the
28 privileges of it's probationary license;

1 (b) Pittsburg Ford, Inc. shall
2 retain Automotive Advisory Consulting
3 Service, or a comparable service, to
4 conduct regular review of the dealership
5 operations, sales transactions,
6 advertising and personnel conduct and
7 prepare a written report each month that
8 is submitted to Pittsburg Ford, Inc. and
9 directly to Ford Motor Company;

10 (C) Pittsburg Ford shall be actually
11 suspended from participating in any
12 transaction involving the sale of a new
13 motor vehicle for a period of seven (7)
14 days; and

15 (D) Any license and special plates
16 issued to Pittsburg Ford, Inc. during the
17 period of five (5) years from the
18 effective date of this decision shall be
19 issued as a probationary license subject
20 to all of the terms and conditions set
21 forth herein and that no cause for
22 disciplinary action or refusal to issue
23 had intervened.

24 2. In the event the Director shall
25 determine, after giving respondent due notice
26 and an opportunity to be heard, that Pittsburg
27 Ford, Inc. had violated any of the terms and
28 conditions under which the probationary

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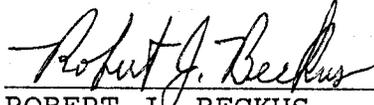
license and special plates were issued, the
director may, in his discretion, revoke or
suspend the probationary license.

D. Paragraph 15 on page 9 is deleted.

E. Paragraph 16 on page 9 is renumbered Paragraph 15 and is
amended to read: "This matter is remanded to the Department
for action consistent with this order."

NEW MOTOR VEHICLE BOARD

DATED 5 - 3 - 88


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Vice President

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

10 In the Matter of the Appeal of)
11)
12 PITTSBURG FORD, INC.,)
13)
14 Appellant,)

Appeal No. A-98-86

15 vs.)

16 NOTICE OF CLERICAL
17 ERROR AND CORRECTION
18 OF FINAL ORDER

19 DEPARTMENT OF MOTOR VEHICLES)
20 OF THE STATE OF CALIFORNIA,)

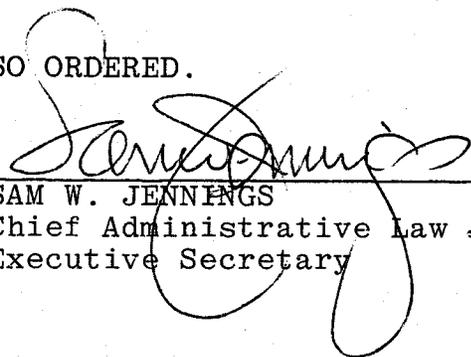
21 Respondent.)
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28 Notice is hereby given that the Final Order of the New
29 Motor Vehicle Board in the matter of the Appeal of Pittsburg
30 Ford, Inc. vs. Department of Motor Vehicles of the State of
31 California, dated February 23, 1987, on page 5, paragraph 11B,
32 line 12, should be corrected to read as follows:

33 "accusation was filed on April 10, 1986. All but
34 one of the specific"

35 SO ORDERED.

36 DATED: March 9, 1987

37 

SAM W. JENNINGS
Chief Administrative Law Judge/
Executive Secretary

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STATE OF CALIFORNIA

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NEW MOTOR VEHICLE BOARD

9

10 In the Matter of the Appeal of)
11 Pittsburg Ford, Inc.,)
12 Appellant,)
13 vs.)
14 Department of Motor Vehicles)
15 of the State of California.)
16 Respondent.)

Appeal No. A-98-86

FINAL ORDER

16

17

18 1. On April 10, 1986, the Department of Motor Vehicles,
19 ("Department"), filed a formal accusation against Pittsburg Ford
20 Inc. for alleged violations of the California Vehicle Code and
21 Title 13 of the California Administrative Code. A hearing on the
22 matter was held before Ruth S. Astle, Administrative Law Judge,
23 Office of Administrative Hearings, in San Francisco, California
24 on May 1, 2, 5, 6, 1986 and June 19, 1986. On July 3, 1986, the
25 administrative law judge submitted a proposed decision which
26 revoked the dealer's license and special plates of Pittsburg
27 Ford. However the revocations were stayed subject to specified

1 conditions of probation. The administrative law judge's proposed
2 decision was adopted by the Department on July 11, 1986.

3 2. On August 15, 1986, Pittsburg Ford filed an appeal with
4 the New Motor Vehicle Board ("Board") pursuant to section 3052 of
5 the California Vehicle Code.

6 3. The appeal alleged the following:

7
8 A) That the Department proceeded without or in excess
9 of its jurisdiction [Vehicle Code section 3054(a)];

10
11 B) That the Department has proceeded in a manner
12 contrary to law [Vehicle Code section 3054(b)];

13
14 C) That the Department's decision is not supported by
15 the findings [Vehicle Code section 3054(c)];

16
17 D) That there was relevant evidence, which in the
18 exercise of reasonable diligence, could not have been
19 produced or which was improperly excluded at the
20 hearing [Vehicle Code section 3054(e)];

21
22 E) That the Department's determination or penalty, as
23 provided in the decision of the Department, is not
24 commensurate with the findings [Vehicle Code section
25 3054(f)].

26 4. Briefs were submitted to the Board by Pittsburg Ford
27 and the Department.¹ Pittsburg Ford requested and was granted

1 permission to present additional evidence before the Board.

2 5. A hearing was held before the Board on January 13, 1987
3 at which time the Board received further evidence and heard oral
4 arguments.

5 I

6 DETERMINATIONS OF THE BOARD

7
8 6. Vehicle Code section 3054 provides that the Board shall
9 have the power to reverse or amend the decision of the Department
10 if it determines that any of the following exist:

- 11 (a) The department has proceeded without or in excess of
12 its jurisdiction.
- 13 (b) The department has proceeded in a manner contrary to
14 the law.
- 15 (c) The decision is not supported by the findings.
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22 1 Despite the fact that the Notice of Appeal raised five (5)
23 grounds for review, the brief of Pittsburg Ford stated that,
24 "This appeal has been filed for the sole purpose of having the
25 Board review the terms of the five-year probation imposed by the
26 Department. In particular, Appellant invites the Board's
27 attention to Paragraph 1(b) of the order which Appellant contends
is unnecessary, unreasonable, unjust, and unsupported by the
findings." Paragraph 1(b) required that a representative of Ford
Motor Company must actively participate in the management,
direction and control of the dealership on a daily basis for the
five-year term of the probation.

1 (d) The findings are not supported by the weight of the
2 evidence in the light of the whole record reviewed in
3 its entirety, including any and all relevant evidence
4 adduced at any hearing of the board.

5 (e) There is relevant evidence, which in the exercise of
6 reasonable diligence, could not have been produced or
7 which was improperly excluded at the hearing.

8 (f) The determination or penalty, as provided in the
9 decision of the department is not commensurate with
10 the findings.

11 WHETHER THE DEPARTMENT HAS PROCEEDED WITHOUT OR IN EXCESS OF
12 ITS JURISDICTION [Vehicle Code section 3054(a)]

13 7. The Board finds that the Department did not proceed
14 without or in excess of its jurisdiction.

15 WHETHER THE DEPARTMENT PROCEEDED IN A MANNER CONTRARY TO
16 LAW. [Vehicle Code section 3054(b)]

17 8. The Board finds that the Department did not proceed in
18 a manner contrary to law.

19 WHETHER THE DEPARTMENT'S DECISION IS SUPPORTED BY THE
20 FINDINGS. [Vehicle Code section 3054(c)]

21 9. The Board finds that the Department's Decision is
22 supported by the findings.

23 WHETHER THE FINDINGS ARE SUPPORTED BY THE WEIGHT OF THE
24 EVIDENCE IN LIGHT OF THE WHOLE RECORD REVIEWED IN ITS
25 ENTIRETY, INCLUDING ANY AND ALL RELEVANT EVIDENCE ADDUCED AT
26 THE HEARING BEFORE THE BOARD. [Vehicle Code section
27 3054(d)]

10. It is determined that the findings of the Department

1 are supported by the weight of the evidence contained in the
2 record.

3 11. In addition to the findings of the Department, the
4 Board further finds as follows:

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A. It is determined that Pittsburg Ford regularly advertised "Invoice Sales." It is impossible to determine the total number of buyers who were deceived by altered invoices over the long period involved.

B. Tidwell began altering invoices in early 1984. The accusation was filed on April 10, 1986. The specific violations that were found to have occurred involved transactions which took place during the time period from January 3, 1986 through March 3, 1986, which was immediately prior to the filing of the accusation. This represents only two months of the two year period during which Pittsburg Ford was engaged in altering invoices.

C. Two of the transactions which occurred during the above two-month period involved vehicles purchased by U. S. Fleet Leasing, Inc. in February, 1986. The Department found that violations had occurred in regard to these two transactions. The Board finds that in addition to the two February, 1986 transactions, Pittsburg Ford fraudulently used altered invoices in

1 connection with the sale of 15 additional vehicles to
2 U. S. Fleet Leasing Inc. These 15 sales occurred on
3 the following dates:

4 January 3, 1985

5 February 7, 1985

6 March 12, 1985

7 April 2, 1985 (4 vehicles)

8 April 16, 1985

9 May 17, 1985

10 July 26, 1985 (2 vehicles)

11 August 22, 1985

12 October 18, 1985

13 February 11, 1986

14 March 5, 1986

15
16 D. The amounts by which these invoices were raised ranged
17 from \$202.93 to \$1,000 with the majority being raised
18 by \$300 or \$500. The total loss to U. S. Fleet Leasing
19 Inc. concerning these vehicles amounted to \$6123.25.

20
21 E. The victims of the specifically identified fraud
22 included individuals, corporations, and a bank, as well
23 as professional vehicle buyers such as U. S. Fleet
24 Leasing Co. and Gold Key Sales/Leasing, and a new car
25 salesman with 20 years of experience in the automotive
26 field in many capacities including managerial.

27 / /

1 F. The Board finds that it was common knowledge among the
2 employees of Pittsburg Ford that invoices were being
3 altered and fraudulently used to consummate sales.
4 Many employees personally witnessed the cutting,
5 pasting, and photocopying of invoices. During the time
6 period in which invoices were being altered, at least
7 three other individuals other than Tidwell engaged in
8 the practice of representing the altered invoices as
9 original invoices and thus defrauding consumers.

10
11 G. The Board finds that La Roy Doss, the President of
12 Pittsburg Ford, had actual knowledge of the practice
13 of altering invoices and actual knowledge of the fact
14 that the altered invoices were being used to
15 consummate sales.

16
17 H. Doss not only had knowledge of the altered invoices
18 but also had access to them. In addition, on at least
19 one instance Doss had the altered invoices in his
20 possession, and on at least one other occasion while
21 personally dealing with a customer in his office, Doss
22 specifically requested Tidwell to bring Doss one of
23 Tidwell's invoices. This request for Tidwell's
24 invoice was made while Doss was in his office with the
25 original unaltered invoice only six or seven steps away
26 from him. Tidwell's invoices (all of which were
27 altered) were in Tidwell's office which was at the rear

1 of the dealership, a considerable distance from Doss'
2 office.

3
4 WHETHER THERE WAS RELEVANT EVIDENCE WHICH IN THE EXERCISE OF
5 REASONABLE DILIGENCE, COULD NOT HAVE BEEN PRODUCED OR WAS
6 IMPROPERLY EXCLUDED AT THE HEARING. [Vehicle Code section
3054(e)]

7 12. One of the conditions of the issuance of a
8 probationary vehicle dealer's license and special plates was
9 that a representative of Ford Motor Company actively participate
10 in the management, direction and control of Pittsburg Ford on a
11 daily basis for the five year probationary term. Pittsburg Ford
12 established that Ford Motor Company will not abide by the term
13 of probation.

14
15 WHETHER THE DETERMINATION OR PENALTY, AS PROVIDED IN THE
16 DECISION OF THE DEPARTMENT IS COMMENSURATE WITH THE
17 FINDINGS [Vehicle Code section 3054(f)]

18 13. Except as indicated below, the Board determines that
19 the Department's penalty of revocation of the Vehicle Dealer's
20 license and special plates is commensurate with the findings.

21 ORDER AMENDING THE DECISION OF THE DEPARTMENT

22
23 14. After consideration of all of the evidence in the
24 record of the Department, as well as the evidence adduced at the
25 hearing before the Board on January 13, 1987, the briefs and oral
26 arguments in connection therewith, it is hereby ordered that:

27 / /

1 A. The decision of the Department is amended to
2 incorporate the findings and determinations of the
3 Board as stated herein.

4
5 B. The order of the Department's order of revocation is
6 amended to read as follows:

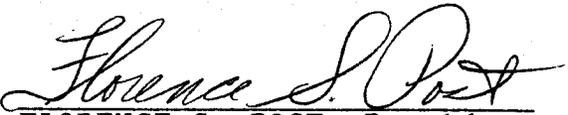
7
8 Dealer's license and special plates No. 2731 issued to
9 Pittsburg Ford, Inc., a corporation, are hereby
10 revoked.

11
12 15. The owners of Pittsburg Ford shall be given a period of
13 one year to either sell the dealership or otherwise dispose of
14 their interests therein. This one-year period is intended to
15 provide Ford Motor Company with sufficient time to locate a
16 qualified person to replace Pittsburg Ford so that any adverse
17 effect on the innocent employees of Pittsburg Ford and the
18 community will be minimized.

19 16. This matter is remanded to the Department for fixing
20 the effective date of this order consistent with the preceding
21 paragraph.

22
23 NEW MOTOR VEHICLE BOARD

24
25 Dated Feb. 23, 1987


26 FLORENCE S. POST, President

27