

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
)
SABA A. SABA, SPD PARTNERS, INC.,) Protest No. PR-1634-98
and HONDA KAWASAKI SPORTCENTER,)
)
Protestant,)
)
vs.)
)
AMERICAN HONDA MOTOR COMPANY, INC.)
)
Respondent.)
_____)

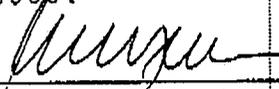
DECISION

The attached "Proposed Ruling on Protestant's Request to File or Reinstate Protest and Request for Stay of Termination, and Proposed Ruling on Respondent's Request for Rejection of Protest and For Enforcement of Settlement Agreement" of the Administrative Law Judge was considered by the Public members of the New Motor Vehicle Board at its General meeting of April 28, 2000. The provisions of the Proposed Ruling not permitting discovery are stricken (paragraph 12 of the Findings and paragraph 2 of the Order). Any document to be admitted at the Monday, May 15, 2000, Hearing must be exchanged between the parties by Wednesday, May 10, 2000. If a document is not exchanged, it will not be admitted at the evidentiary Hearing. After such consideration, the members of the Board adopted the

Proposed ruling as modified as its Decision in the above-entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 1st DAY OF MAY 2000.



ROBERT T. (TOM) FLESH
President
New Motor Vehicle Board

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2 Sacramento, California 95814
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CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
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11 In the Matter of the Protest of)

12 SABA A. SABA, SPD PARTNERS, INC.,)
13 and HONDA KAWASAKI SPORTCENTER,)

14 Protestant,)

15 vs.)

16 AMERICAN HONDA MOTOR COMPANY,)
17 INC.,)

18 Respondent.)

Protest No. PR-1634-98

PROPOSED RULING ON PROTESTANT'S
REQUEST TO FILE OR REINSTATE
PROTEST AND REQUEST FOR STAY OF
TERMINATION, AND PROPOSED
RULING ON RESPONDENT'S REQUEST
FOR REJECTION OF PROTEST
AND FOR ENFORCEMENT OF
SETTLEMENT AGREEMENT

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1 This matter was heard on April 25, 2000, by J. Keith McKeag,
2 Administrative Law Judge. Saba A. Saba, SPD Partners, Inc., and Honda
3 Kawasaki Sportcenter (hereafter "Protestant") appeared through attorney
4 J. Brian Urtnowski, and Respondent American Honda Motor Company, Inc.,
5 (hereafter "Honda") appeared through attorney Bruce L. Ishimatsu. Both
6 appearances were made by telephone. Extensive briefs were filed by both
7 parties and were reviewed prior to the hearing.

8 BACKGROUND

9 1. Protestant has been a Honda motorcycle dealer for almost seven
10 years. Protestant also sells Kawasaki motorcycles from the same
11 facility. In 1998, Protestant was threatened with termination by both
12 manufacturers. Protestant filed two Protests, one against Kawasaki and
13 the present proceeding against Honda. Protestant settled its dispute
14 with Honda, and achieved a denial of the Kawasaki termination after a
15 hearing on the merits. The Kawasaki case remains on appeal.

16 2. The settlement with Honda was memorialized in a written
17 settlement agreement which was adopted by the Board pursuant to Vehicle
18 Code¹ Section 3050.7 on November 23, 1998. That Agreement/Order
19 contained conditions which Protestant agreed to meet or be subject to
20 termination. By March 1999, Honda asserted that Protestant had not met
21 those conditions, and threatened termination. After negotiations, in
22 which both sides were again represented by counsel, a new settlement
23 agreement was executed and presented to the Board for its approval and
24 adoption under Section 3050.7. That Order was made on May 12, 1999.
25 Hereafter reference to "the Order" shall refer to the Settlement
26

27 _____
28 ¹ All statutory references are to the California Vehicle Code,
unless otherwise noted.

1 Agreement/Order of May 12, 1999.

2 3. The Order contains several conditions relating to construction
3 of dealership facilities, dedication of space in those facilities to
4 Honda, sales performance and service performance. As to the sales and
5 service performance requirements, Honda was to calculate Protestant's
6 performance and report to Protestant on a quarterly basis. Any reported
7 deficiency was to be entirely cured by the end of the following quarter.
8 Failure to comply fully with such conditions was agreed to constitute
9 "irrebutable 'good cause' for termination under Sections 3060 and 3061
10 of the California Vehicle Code." Full and complete compliance was
11 required, and it was expressly agreed that "substantial compliance"
12 would not be sufficient. The Order withdrew the Protest with prejudice,
13 acknowledged that each party had been represented by counsel and had
14 "voluntarily and knowingly executed this Agreement without fraud, duress
15 or undue influence", and that the Order constituted the entire agreement
16 between them, superseding all prior negotiation and understandings.
17 Under the Order, the Board reserved jurisdiction "to enforce this
18 Agreement if necessary." The Order provided that in the event of
19 noncompliance Honda "shall be entitled to deem Dealer's Sales and
20 Service Agreements terminated upon written notice without a hearing
21 before the Board or litigation in court."

22 4. By letter dated June 30, 1999, Honda advised Protestant of
23 several deficiencies which existed as to facility improvements, space
24 dedication, market share, sales and service conditions under the Order,
25 advised that action must be taken to cure the deficiencies, and reminded
26 Protestant that "failure to completely cure constitutes good cause to
27 terminate the dealership." By letter dated April 3, 2000, Honda advised
28 Protestant that it had failed to cure the deficiencies set out in the

1 June 30, 1999, letter and that all of its dealer agreements with Honda
2 "are hereby terminated, effective immediately, as of the date of this
3 letter."

4 5. Protestant responded by filing, on April 11, 2000, a document
5 seeking to "reinstate" its prior protest or "alternatively" act as a new
6 protest, and requesting an "immediate stay of termination of franchise."
7 Honda then filed opposition papers, requesting that the protest and
8 request for stay be rejected, and that the settlement agreement be
9 summarily enforced without any hearing.

10 CONTENTIONS OF THE PARTIES

11 6. Protestant seeks to reinstate its original Protest which
12 contested the termination threatened in 1998, or to file a new Protest,
13 and requests that the Board issue its automatic stay. It asserts that
14 it is not in breach of any of the terms of the Order but is in full
15 compliance, or that any noncompliance has been waived by Honda.
16 Protestant further asserts that it entered the settlement agreement only
17 due to fraud and duress, and supplies a declaration by Mr. Saba stating
18 that the duress he faced was the threatened termination of the
19 dealership and Honda's refusal to thereafter sell him motorcycles and
20 parts. The fraud is asserted to consist of Honda's failure to supply
21 Protestant with examples of how the sales and service requirements of
22 the Order would be computed. There is no mention of such examples in
23 the Order, but it is asserted that they were orally promised during the
24 negotiations leading to the settlement. Finally, Protestant asserts
25 that he has a due process right to conduct discovery into all of these
26 issues and have a full hearing on the merits as to all of these issues.

27 7. Honda asserts that it has determined Protestant to be in
28 breach of the Order, and that Protestant is not entitled to any

1 procedural mechanism for contesting the accuracy or truth of the facts
2 underlying the noncompliance and termination. It asserts that
3 Protestant has no right to reinstate its old Protest or to file a new
4 one. It filed declarations describing the method of computation of the
5 failure to meet the requirements of the Order, but only with its closing
6 brief on the eve of the hearing when Protestant had no opportunity to
7 respond. It asserts that Protestant has no due process right to
8 discovery, nor to a hearing on a protest, due to its settlement
9 agreement. Finally, it denies any right in Protestant to rescind the
10 Order, or to claim waiver.

11 FINDINGS

12 8. Vehicle Code Section 3050.7 authorizes the Board to adopt a
13 stipulated decision which may provide for a conditional termination of a
14 franchise. In such case, the requirement of a "good cause hearing"
15 under Section 3060 is made inapplicable. If the stipulated decision and
16 order provides for termination upon the failure of the dealer to meet
17 any specified conditions, "...the franchise may be terminated upon a
18 determination, according to the terms of the stipulated decision and
19 order, that the conditions have not been met." This case turns on the
20 questions of who is to make the "determination" that the conditions have
21 not been met, and the nature of the process by which that determination
22 is to be made.

23 9. The answer to the first question is that the Board must make
24 the factual determination that the specified conditions of the
25 stipulated decision and order have or have not been met. The statute
26 simply cannot mean that one party to the agreement has full authority to
27 decide whether the other party has complied with the agreement or not.
28 While the statute does not expressly state who shall make the

1 determination, the statutory framework which created the Board and which
2 provides comprehensive protection for the franchise rights of dealers
3 makes it clear that any such determination which would result in
4 termination of a franchise must be made by the Board. Only a stipulated
5 decision and order which provides for unconditional termination of the
6 franchise may be terminated "without any further proceedings by the
7 board." Section 3050.7.

8 10. Having entered into a settlement agreement which became a
9 stipulated decision and order under Section 3050.7, Protestant gave up
10 its right to file a new protest, or reinstate its old protest, upon the
11 threat of termination for failure to comply with the terms of the order.
12 The hearing to which it is entitled is the hearing under Section 3050.7
13 to determine, according to the terms of the order, whether the
14 conditions of the order have or have not been met. Further, the old
15 protest was dismissed with prejudice, thus there is nothing to
16 reinstate, nor may a new protest be filed as to a termination arising
17 out of the same event which has been settled and made the subject of a
18 Section 3050.7 order.

19 11. Since there is no protest pending under Section 3060, neither
20 is there any "automatic stay" issued under Section 3060. It is clear,
21 however, that a new motor vehicle dealer's franchise may not be
22 terminated without the consent of the dealer, either express or implied
23 through failure to protest a proper notice of intention to terminate, or
24 upon a determination by the Board that good cause exists under Section
25 3061 after a hearing under Section 3066, or a determination by the Board
26 that good cause exists under the terms of a conditional settlement
27 agreement/order under Section 3050.7. Thus, Honda may not unilaterally
28 terminate Protestant's franchise agreements, and must continue to do

1 business with Protestant unless and until the Board makes a
2 determination under Section 3050.7 that termination is proper.

3 12. The only discovery which the Board is allowed to authorize is
4 with regard to "... those proceedings or hearings involving a petition
5 or protest filed pursuant to subdivision (c) or (d) of Section 3050."
6 Section 3050.1 (b). Due process requires reasonable notice and a fair
7 hearing, but does not require formal discovery. No discovery is
8 available under a proceeding under Section 3050.7.

9 13. Protestant's claim that it is entitled to rescission of the
10 settlement agreement/order due to duress must fail. The only "duress"
11 which is asserted is that it entered a settlement agreement in order to
12 avoid fighting a threatened termination proceeding. This is not the
13 sort of duress that entitles a party to an agreement to rescission.
14 Protestant was represented by competent counsel, was experienced in
15 proceedings before the Board, and entered into a common form of
16 settlement in order to avoid further litigation. There is no basis for
17 the claim, and the hearing in this matter need not concern itself with
18 the claim.

19 14. Protestant's claim that it is entitled to rescission due to
20 fraud or mistake must also fail. The assertion is that Honda agreed to
21 provide examples of how it would make the computations of sales and
22 service performance, it failed to do so, and absent the representations
23 Protestant would not have made the settlement agreement. The settlement
24 agreement is, however, a fully integrated written agreement, negotiated
25 and executed by parties represented by counsel. The parole evidence
26 rule excludes evidence of the sort proffered by Protestant, and the
27 hearing in this matter need not concern itself with the claim.

28 15. Protestant's claim of waiver, or estoppel, must be considered.

1 Protestant asserts that Mr. Saba was told by Honda's District Manager,
2 Mr. Little, that the June 30, 1999, and April 3, 2000, letters were
3 incorrect, and that Protestant was in compliance with the settlement
4 agreement. In reliance thereon, Protestant asserts, it took no curative
5 action following the June 30, 1999, letter, and Honda has waived its
6 right to enforce the settlement agreement/order. Each party has filed
7 declarations which are contradictory. Live testimony is required in
8 order that the veracity of the witnesses can be determined. Further,
9 the claim goes to the enforcement of the agreement, not to its formation
10 or rescission.

11 16. The matters for determination are limited and the hearing
12 should take one day or less to complete. It should be scheduled to
13 occur by May 15, 2000, in order that the parties can learn as soon as
14 possible whether their business relationship will continue or be
15 terminated.

16 ORDER

17 1. A hearing is required in order that the Board may make a
18 determination whether, according to the terms of the stipulated decision
19 and order of May 12, 1999, the specified conditions therein have or have
20 not been met, and to determine whether the right to enforce the order
21 has been waived. Pending that determination the franchise is in effect
22 and Honda must continue to do business with Protestant.

23 2. No discovery is authorized or allowed.

24 3. Protestant's claim of rescission due to duress is dismissed.

25 4. Protestant's claim of rescission due to fraud or mistake is
26 dismissed.

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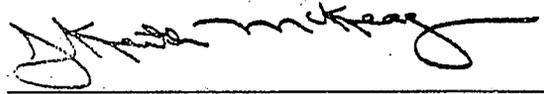
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1. 5. A hearing date shall be scheduled by May 15, 2000.

2 SO ORDERED.

4 DATED: April 26, 2000

NEW MOTOR VEHICLE BOARD

By 

J. KEITH MCKEAG
Administrative Law Judge

27 Steven Gourley, Director, DMV
Tom Novi, Chief,
28 Occupational Licensing Branch, DMV