

NEW MOTOR VEHICLE BOARD  
1507 - 21st Street, Suite 330  
Sacramento, California 95814  
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

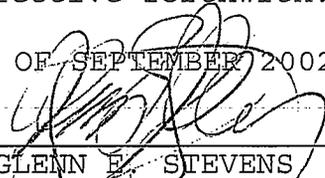
In the Matter of the Protest of )  
)  
MANDAL TRUCK & TRAILER, INC., ) Protest No. PR-1810-02  
a California corporation, )  
)  
Protestant, )  
)  
v. )  
)  
WESTERN STAR TRUCK SALES, INC., )  
a Washington corporation, and )  
DOES 1-20, )  
)  
Respondent. )  
\_\_\_\_\_ )

DECISION

The attached "Proposed Order Re: Respondent Western Star Trucks Sales, Inc.'s Motion to Dismiss for Lack of Jurisdiction, and Proposed Order Re: Protestant Mandal Truck & Trailer Inc.'s Motion for Protest Hearing within Sixty (60) Days of Preliminary Hearing" of the Administrative Law Judge was considered by the Public members of the New Motor Vehicle Board at its General meeting of September 10, 2002. After such consideration, the Public members of the Board adopted the Order on Respondent's Motion to Dismiss and Protestant's Motion as its Decision in the above-entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 10<sup>th</sup> DAY OF ~~SEPTEMBER~~ 2002.

  
\_\_\_\_\_  
GLENN E. STEVENS  
Vice President  
New Motor Vehicle Board

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2 Sacramento, California 95814  
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CERTIFIED MAIL

8 STATE OF CALIFORNIA

9 NEW MOTOR VEHICLE BOARD

10  
11 In the Matter of the Protest of )

12 MANDAL TRUCK & TRAILER, INC., )  
a California corporation, )

13 Protestant, )

14 v. )

15 WESTERN STAR TRUCK SALES, INC., )  
16 a Washington corporation, and )  
DOES 1-20, )

17 Respondent. )

Protest No. PR-1810-02

PROPOSED ORDER RE: RESPONDENT  
WESTERN STAR TRUCKS SALES,  
INC.'S MOTION TO DISMISS FOR  
LACK OF JURISDICTION, and

PROPOSED ORDER RE: PROTESTANT  
MANDAL TRUCK & TRAILER INC.'S  
MOTION FOR PROTEST HEARING  
WITHIN SIXTY (60) DAYS OF  
PRELIMINARY HEARING

19  
20 TO: Steven D. Crabtree, Esq.  
Jennifer L. Spaletta, Esq.  
21 Shanti R. Patching, Esq.  
Attorneys for Protestant  
22 HERUM CRABTREE BROWN  
2291 West March Lane, Suite B100  
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24 Gail M. Blanchard-Saiger, Esq.  
Attorney for Respondent  
25 FOLEY & LARDNER  
300 Capitol Mall, Suite 1125  
26 Sacramento, California 95814-4339

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1 Brian W. McGrath, Esq.  
2 Michael P. Matthews, Esq.  
3 Attorney for Respondent  
4 FOLEY & LARDNER  
5 777 East Wisconsin Avenue  
6 Milwaukee, Wisconsin 53202-5367

7 FACTUAL AND PROCEDURAL BACKGROUND

8 1. Protestant, Mandal Truck & Trailer, Inc. ("Mandal") is a new  
9 motor vehicle dealer selling trucks and trailers and is located at 1629  
10 E. Louise Avenue, Lathrop, California.

11 2. Respondent, Western Star Trucks Sales, Inc., ("Western Star")  
12 is incorporated under the laws of the State of Washington and has its  
13 principal place of business in Willoughby, Ohio.<sup>1</sup>

14 3. In 1998, representatives of the parties signed a "Western  
15 Star Trucks Sales Inc. Dealer Full Service Agreement" ("Dealer  
16 Agreement") which established its duration to be "until February 28,  
17 1999, at which time it shall terminate automatically if not earlier  
18 terminated." No subsequent dealer agreements were executed.

19 4. The Dealer Agreement appointed Mandal as a dealer for the  
20 sale of Western Star "Products" defined to be "Trucks and Parts" with  
21 "Trucks" defined to mean "Class 8 trucks and glider kits bearing the  
22 'Western Star' trademark".

23 5. By letter dated May 8, 2002, Western Star gave Mandal notice  
24 of Western Star's intention to terminate the Dealer Agreement. A copy  
25 of this notice was not received by the Board. The notice stated that  
26 Western Star was also filing a demand for arbitration at the offices of  
27 the American Arbitration Association in the State of Washington.

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<sup>1</sup> At the time the Dealer Agreement was entered into, the location  
of Western Star was indicated as British Columbia, Canada.



Filings with the American Arbitration Association  
and Filings in Federal Court

1  
2  
3 11. On May 9, 2002, the day after the date of the notice of  
4 termination, Western Star filed a Demand for Arbitration with the  
5 American Arbitration Association ("AAA"), at its Seattle, Washington  
6 office. The demand requested Seattle, Washington as the locale for the  
7 hearing.

8 12. Mandal filed its Answer and Counterclaim with the AAA  
9 asserting among other things that arbitration "...is improper because  
10 the arbitration provision relied on by Western Star is both  
11 unenforceable and not a provision governing the current relationship of  
12 the parties..."

13 13. On June 3, 2002, Western Star filed, in the United States  
14 District Court, Western District of Washington At Seattle, a Petition  
15 to Compel Arbitration.

16 14. On June 17, 2002, in that same court, Mandal filed a Motion  
17 to Dismiss for Improper Venue; or to Transfer for Improper Venue; or to  
18 Transfer for Convenience. In this motion, Mandal asserted that the  
19 federal court in Washington should dismiss Western Star's petition to  
20 compel arbitration as the venue was improper or in the alternative that  
21 the motion of Western Star to compel arbitration should be transferred  
22 to the United States District Court for the Eastern District of  
23 California, Sacramento Division.

24 15. On July 8, 2002, Western Star filed its opposition to  
25 Mandal's Motion to Dismiss or Transfer, and also on that same date  
26 filed a motion to consolidate both its motion to compel arbitration and  
27 Mandal's motion to dismiss or transfer the matter for improper venue.

28 16. On July 11, 2002, Mandal filed its reply to the motion to

1 dismiss or transfer venue as well as its opposition to Western Star's  
2 request to consolidate the two motions and also requested oral  
3 argument.

4 Status of Arbitration and Federal Court Proceedings

5 17. As of July 30, 2002, no arbitration hearing had been  
6 conducted before the AAA, no hearings had been held in federal court,  
7 nor had any orders or rulings been issued by the federal court.

8 The Motions Before the Board

9 18. As to the motions filed with the Board, a scheduled  
10 telephonic hearing of the motions was held on July 30, 2002, before  
11 Anthony M. Skrocki, Administrative Law Judge. During the hearing,  
12 Mandal was represented by Shanti R. Patching and James Belford Brown of  
13 Herum Crabtree Brown. Western Star was represented by Gail Blanchard-  
14 Saiger and Brian W. McGrath of Foley & Lardner.

15 Western Star's Motion to Dismiss the Protest

16 Is there an enforceable arbitration provision in the  
17 Dealer Agreement that would preclude a hearing  
18 of the protest before the Board?

19 19. If there is a franchise in existence which contains a valid  
20 arbitration agreement applicable to this dispute, Western Star would be  
21 correct in its assertion that the provisions of the California Vehicle  
22 Code are preempted by the Federal Arbitration Act, 9 U.S.C. section 2,  
23 which provides as follows:

24 A written provision in ... a contract evidencing a  
25 transaction involving commerce to settle by arbitration a  
26 controversy thereafter arising out of such contract ... shall  
27 be valid, irrevocable, and enforceable, save upon such  
28 grounds as exist at law or in equity for the revocation of  
any contract.

29 20. The case authorities cited by Western Star [including the  
United States Supreme Court case of *Southland v. Keating*, 465 U.S. 1

1 (1984) involving the provisions of the California Franchise Investment  
2 Law, (Cal. Corp. Code Section 31512)] overwhelmingly hold that a  
3 conflict between a state statute and section 2 of the Federal  
4 Arbitration Act would violate the Supremacy Clause of the United States  
5 Constitution (U.S. Const., art VI, cl.2) with the result being that the  
6 arbitration agreement, if one existed, would be enforceable  
7 notwithstanding contrary state law. Therefore, there is no question  
8 that the FAA preempts state statutes when there is a written  
9 arbitration agreement in existence.

10 21. However, the issue here is whether there is a written  
11 arbitration agreement currently in effect between the parties. This is  
12 the threshold issue to be decided and, as stated in *Riley Manufacturing*  
13 *Company, Inc. v. Anchor Glass Container Corporation*, U.S. Court of  
14 Appeals, Tenth Circuit, (1998), 157 F.3d 775, 779:

15 Unlike the general presumption that a particular issue is  
16 arbitrable when the existence of an arbitration agreement is  
17 not in dispute, see *Moses H. Cone Mem'l Hosp. v. Mercury*  
18 *Constr. Corp.*, 460 U.S. 1, 24-25, 103 S.Ct. 927, 74 L.Ed.2d  
19 765 (1983), when the dispute is whether there is a valid and  
20 enforceable arbitration agreement in the first place, the  
21 presumption of arbitrability falls away. See *First Options*  
22 *of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944-45, 115 Sct.  
23 1920, 131 L.Ed2d 985 (1995).

24 22. In discussing the significance of an arbitration clause in  
25 another franchise dispute involving the application of the California  
26 Vehicle Code, the Court of Appeals of Ohio in *Sterling Truck*  
27 *Corporation v. Sacramento Valley Ford Truck Sales, Inc.* 141 Ohio App.  
28 3d 397, 751 N.E.2d 517, 519 (2001), stated as follows:

29 The Federal Arbitration Act contains Congress' declaration of  
30 a "national policy favoring arbitration and withdrew the  
31 power of the states to require a judicial forum for the  
32 resolution of claims which the contracting parties agreed to  
33 resolve by arbitration." *Southland Corp. v. Keating* (1984),  
34 465 U.S. 1, 10, 104 S.Ct. 852 862-863. 79 L.Ed.2d 1, 17-18.  
35 To that end, the states have no authority to prohibit the

1 arbitration of disputes. See, e.g. *Saturn Distrib. Corp. v.*  
2 *Williams* (C.C.4, 1990), 905 F.2d 719.

3 For the limitation on the right of states to prohibit  
4 arbitration is not the same thing as requiring arbitration of  
5 disputes. Arbitration is a matter of contract, and a party  
6 cannot be forced to arbitrate in the absence of a specific  
7 agreement to do so. *AT&T Technologies, Inc. v. Communications*  
8 *Workers of AM.* (1986), 475 U.S. 643, 648-649, 106 S.Ct. 1415,  
9 1418-1419, 89 L.Ed.2d 648, 655-656. Moreover, "arbitration  
under the [Federal Arbitration Act] is a matter of consent  
not coercion, and parties are generally free to structure  
their arbitration agreements as they see fit." *Volt Info.*  
*Sciences, Inc. v. Leland Stanford Junior Univ. Bd. of*  
*Trustees* (1989), 489 U.S. 468, 479, 109 S.Ct. 1248, 1255-  
1256, 103 L.Ed.2d 488, 500.

10 In *Volt*, the contract contained a choice-of-law clause  
11 providing that the contract would be governed under  
12 California law. California Code of Civil Procedure 1281.2(c)  
13 provided that a court may stay arbitration pending resolution  
14 of related litigation where there is a possibility of  
15 conflicting rulings on a common issue of law and fact. The  
United States Supreme Court held that Section 2 of the  
Federal Arbitration Act was inapplicable because the parties  
themselves had agreed to the California limitations on  
arbitration by including the choice-of-law provision. The  
United States Supreme Court stated:

16 "There is no federal policy favoring arbitration  
17 under a certain set of procedural rules; the  
18 federal policy is simply to ensure the  
19 enforceability, according to their terms, of  
20 private agreements to arbitrate. Interpreting a  
21 choice-of-law clause to make applicable state rules  
22 governing the conduct of arbitration - rules which  
23 are manifestly designed to encourage resort to the  
arbitral process - simply does not offend the rule  
of liberal construction set forth in *Moses H. Cone*  
*(Memorial Hosp. v. Mercy Constr. Corp.* (1983), 460  
U.S. 1, 103 S.Ct. 927, 74 L.Ed.2d 765), nor does it  
offend any other policy embodied in the FAA."  
*Volt*, 489 U.S. at 476, 109 S.Ct. At 1254, 103  
L.Ed.2d at 498.

24 23. The more specific issues then become:

- 25 (A) Does the 1998 Dealer Agreement operate as a written contract  
26 for the purposes of the FAA and as an existing franchise for  
the purposes of the Vehicle Code?
- 27 (B) Does the Dealer Agreement contain an arbitration provision?
- 28 (C) Is the arbitration provision applicable to this dispute?

1                    (A) Does the 1998 Dealer Agreement operate as a written  
2                    contract for the purposes of the FAA and as an existing  
3                    franchise for the purposes of the Vehicle Code?

4                    24. For the FAA to be applicable, the arbitration agreement must  
5 be in a writing<sup>3</sup> and the Vehicle Code requires that a writing exist for  
6 there to be a "franchise"<sup>4</sup> in order for Section 3060 to be applicable.<sup>5</sup>

7                    25. There is a "Western Star Trucks Sales, Inc., Dealer Full  
8 Service Agreement" ("Dealer Agreement") signed by representatives of  
9 the parties and dated April 16, 1998. This document would qualify as a  
10 "contract evidencing a transaction involving commerce" satisfying the  
11 writing requirement of section 2 of the FAA. The Dealer Agreement  
12 would also qualify as a "franchise" within the definition of Vehicle  
13 Code section 331 and for application of section 3060.

14                    26. However, the Dealer Agreement by its terms expired on  
15 February 28, 1999, and was not renewed. It is noted that Mandal  
16 asserted in its answer on page 2, paragraph II(A), filed with the AAA  
17 that: "The Franchise Agreement has not been renewed and no new written  
18 agreement has subsequently been entered into. Thus, the oral  
19 agreements of the parties govern their current business relationship.  
20 This agreement does not contain an arbitration provision."

21                    27. Mandal seems to want to have its cake and eat it too. Before  
22 the AAA, Mandal asserts there is no written agreement containing an  
23 arbitration provision. But, before the Board, Mandal is seeking the

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24                    <sup>3</sup> Section 2 of the FAA requires there be a "... written provision  
25 in ... a contract ...")

26                    <sup>4</sup> "A 'franchise' is a written agreement..." Vehicle Code section  
27 331(a).

28                    <sup>5</sup> Vehicle Code section 3060 provides in part that "... no  
franchisor shall terminate or refuse to continue any existing  
franchise..."

1 protection of the Vehicle Code which requires that Mandal be a  
2 franchisee facing a termination or refusal to continue of an "existing  
3 franchise", which the Vehicle Code requires to be in writing. If  
4 Mandal is correct in its position before the AAA that there is no  
5 written agreement in effect, then there is no "franchise" in existence  
6 and there is no basis for a protest pursuant to section 3060.

7 28. It is determined that Mandal is a franchisee operating under  
8 an existing franchise for the following reasons:

- 9 A) Vehicle Code Section 3060 has, by operation of law,  
10 continued the Dealer Agreement as a franchise into the  
11 indefinite future, thus the Dealer Agreement did not  
12 "terminate automatically" on February 28, 1999<sup>6</sup>; and  
13 B) Paragraph 21 of the Dealer Agreement partially takes into  
14 account this eventuality by providing: "Dealer agrees that,  
15 if Western Star is prohibited by applicable law from failing  
16 or refusing to renew its relationship with Dealer, any such  
17 renewal shall be made on the terms and conditions of Western  
18 Star's then current standard form of Dealer Agreement,..."

19 29. Paragraph 21 of the Dealer Agreement manifests that the  
20 parties intended to have their relationship continue beyond the stated  
21 term if applicable law prevented Western Star from refusing to renew  
22 the franchise. And, although under Paragraph 21, Western Star is  
23 granted the right (on a possibly unenforceable "take it or be  
24 terminated basis") to offer a new franchise under "Western Star's then  
25 current standard form" in renewal of the old, Western Star did not do

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26  
27 <sup>6</sup> Vehicle Code Section 3060 provides in part, "Notwithstanding ...  
28 the terms of any franchise, no franchisor shall terminate or refuse to  
continue any existing franchise unless ..."

1 so. Therefore, it is concluded that the 1998 Dealer Agreement  
2 continued beyond its stated termination date and its terms continue to  
3 remain applicable to the franchise relationship.

4 30. Western Star does not contest the existence of a franchise  
5 satisfying both the FAA and the Vehicle Code. As stated in its brief in  
6 support of its Motion to Dismiss, "Thus, the end date set forth in the  
7 Dealer Agreement is not enforceable under California law and the Dealer  
8 Agreement continued in place past February 28, 1999 and, in fact,  
9 continues in place through today." (Page 16, lines 6 - 8.)

10 Conclusion as to whether the 1998 Dealer Agreement  
11 operates as a written contract for the purposes of the FAA  
and as a franchise for the purposes of the Vehicle Code.

12 31. The 1998 Dealer Agreement is a written agreement between the  
13 parties which satisfies the threshold requirement for application of  
14 the FAA and makes section 3060 of the Vehicle Code potentially  
15 applicable as well.

16 (B) Does the Dealer Agreement contain an arbitration provision?

17 32. The relevant paragraphs of the Dealer Agreement that are at  
18 issue are the following:

19 31. Notwithstanding anything to the contrary contained in  
20 this Agreement (including, but not limited to, Paragraph 32  
21 hereof), any controversy or claim arising out of or in  
22 connection with this Agreement, its construction,  
23 interpretation, effect, performance, non-performance,  
24 termination, or consequences thereof, or any transaction  
25 contemplated hereby, however characterized as a matter of law  
26 (whether in contract, tort or otherwise), including, without  
27 limitation, all claims under any federal or state anti-trust  
28 laws, the Automobile Dealers Day in Court Act (15 U.S.C. "  
(sic) 1221-25), any state franchise or other law regulating  
relations between motor vehicle manufacturers, distributors  
and dealers, or any other federal, state, or local statute,  
ordinance, regulation or other law, shall be settled by  
arbitration in Seattle, Washington in accordance with the  
Commercial Arbitration Rules of the American Arbitration  
Association, and judgement on the award rendered by  
arbitrator(s) (sic) may be entered in any court having  
jurisdiction thereof...

1 32. This Agreement shall be governed by and construed in  
2 accordance with the laws of the state in which Dealer's  
3 principal place of business, as designated in Paragraph 6  
4 hereof, is located, and such laws shall be applied and  
5 controlling (sic) any arbitration conducted pursuant to  
6 Paragraph 31 hereof; provided that, if any provision of this  
7 Agreement would violate any applicable statute, regulation or  
8 common law of such state or any other jurisdiction, such  
9 provision will be deemed amended to the extent necessary to  
10 comply with such statutes, regulations or common law, and all  
11 other provisions hereof shall remain in full force and  
12 effect.

13 33. The tension is between the language in Paragraph 31 of the  
14 Agreement which provides for arbitration and Paragraph 32 which recites  
15 that the law of the Dealer's place of business (in this case,  
16 California) should govern, and that if any provision of the Agreement  
17 would violate California law, the offending provision would be severed  
18 and the agreement would be governed by California law. If Paragraph 32  
19 is applicable to the arbitration provision its effect would be to  
20 "sever" the arbitration provision from the Agreement, and comply with  
21 the law of California providing for a hearing before the Board.

22 34. Mandal asserts that in two other cases presently before the  
23 Board, that there were similar clauses which were interpreted so that  
24 the documents then at issue evidenced the parties' intent to sever the  
25 arbitration provisions from the Agreement as arbitration was  
26 inconsistent with the California Vehicle Code providing for a hearing  
27 before the Board. However, in each of those two prior cases, the  
28 language in issue was significantly different. Here, the Dealer  
29 Agreement manifests just the opposite intent.

30 35. Paragraph 31 of this Dealer Agreement evidences the intention  
31 of the parties to exclude the arbitration requirement established by  
32 Paragraph 31 from the severability provisions of Paragraph 32. In  
33 brief, Paragraph 31 has the effect of stating that, "Notwithstanding

1 Paragraph 32, the disputes shall be submitted to arbitration."  
2 Therefore, the Dealer Agreement evidences the parties' intent that  
3 California law shall not take precedence over the arbitration provision  
4 and, unless the arbitration agreement would be invalid under California  
5 law, the provisions of Paragraph 31 would be applicable. Because there  
6 is nothing in California law that makes an agreement to arbitrate this  
7 dispute invalid, the provisions of Paragraph 31 remain intact and  
8 applicable.<sup>7</sup>

9 36. Further, even if there were some provision in California law  
10 that purported to make this arbitration agreement invalid, such a  
11 provision would be preempted by Section 2 of the FAA and therefore  
12 ineffective as a violation of the Supremacy Clause of the Constitution.  
13 (See discussion in paragraphs 19 - 22 above.)

14 Conclusion as to whether the Dealer Agreement contains  
15 an arbitration provision.

16 37. The Dealer Agreement does contain an agreement to arbitrate.

17 C. Is the arbitration agreement applicable to this dispute?

18 38. The language of paragraph 31 of the Dealer Agreement includes  
19 general language covering any controversy or claim arising out of or in  
20 connection with this Agreement including termination but more  
21 specifically also includes "without limitation" all claims under  
22 "...any state franchise or other law regulating relations between motor  
23 vehicle manufacturers, distributors and dealers..."

24 ///

25 \_\_\_\_\_  
26 <sup>7</sup> Section 11713.3(g) makes it unlawful for a manufacturer to  
27 require any controversy between a dealer and the manufacturer "to be  
28 referred to any person other than the board, if the referral would be  
binding on the dealer." However, this provision also states, "This  
subdivision does not, however prohibit arbitration before an independent  
arbitrator."

1                    Conclusion as to whether the arbitration agreement  
2                    is applicable to this dispute.

3                    39. The language of Paragraph 31 manifests the intentions of the  
4 parties to have this type of dispute resolved by arbitration. Pursuant  
5 to paragraph 32 of the Dealer Agreement, any such arbitration will  
6 necessitate the application of the substantive portions of California  
7 law, including Section 3061, in determining whether Western Star can  
8 prove good cause for termination.

9                    PROPOSED ORDER RE: WESTERN STAR'S MOTION TO DISMISS  
10                    FOR LACK OF JURISDICTION

11                    Should the Protest be dismissed or stayed?

12                    40. The issue now becomes whether the Protest should be dismissed  
13 or whether the proceedings before the Board should be stayed pending  
14 the outcome of the proceedings in federal court. As of the date of the  
15 hearing before the administrative law judge (July 30, 2002), there had  
16 been no orders or rulings issued by the federal court. Because it is  
17 possible that for some unexpected reason a court could determine that  
18 arbitration is not required, it is appropriate that the Board at this  
19 time stay all proceedings before it rather than dismiss the protest.  
20 If the federal court grants Western Star's Petition to Compel  
21 Arbitration, the protest should then be summarily dismissed upon the  
22 application of Western Star. If the federal court denies Western  
23 Star's Petition, the parties would then be free to return to the Board  
24 for a hearing on the protest pursuant to the provisions of the Vehicle  
25 Code.

26                    41. It is therefore recommended that the Board issue its order as  
27 follows:

28                    A. Respondent, Western Star Trucks Sales, Inc.'s Motion to

1 Dismiss for Lack of Jurisdiction is denied; however,

2 B. All proceedings before the Board are stayed pending further  
3 order of the Board.

4 Mandal's Motion for Protest Hearing Within  
5 Sixty (60) Days of Preliminary Hearing.

6 42. Mandal filed this motion asserting that it was "to ensure  
7 that its Protest Hearing is scheduled within the statutory time  
8 provided by California Vehicle Code section 3066 so that Western Star's  
9 gamesmanship and delay tactics do not deprive Mandal of a fair hearing  
10 in this forum."

11 43. To resolve the merits of this motion would require an  
12 analysis of section 3066(a) which provides in part, "Upon receiving a  
13 notice of protest pursuant to Section 3060, 3062, 3064, 3065, or  
14 3065.1, the board shall fix a time, which shall be within 60 days of  
15 the order, and place of hearing ...". Mandal asserts that the "order"  
16 referred to which would start the 60-day time period running is the  
17 telephonic Pre-hearing Conference held on June 26, 2002, and Mandal  
18 seeks to have the hearing commence no later than August 26, 2002.

19 44. However, because all proceedings before the Board have been  
20 stayed due to the existence of an agreement to arbitrate this matter,  
21 and because the Protest will likely be dismissed without a hearing,  
22 Mandal's motion is moot.

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1                    PROPOSED ORDER RE: MANDAL'S MOTION FOR PROTEST HEARING  
2                    WITHIN SIXTY (60) DAYS OF PRELIMINARY HEARING

3                    45. It is recommended that the Board issue its order as follows:  
4 Protestant's Motion for Protest Hearing within Sixty (60) Days of  
5 Preliminary Hearing is denied.  
6  
7

8                    I hereby submit the foregoing which  
9 constitute my proposed orders in the  
10 above-entitled matter, as a result  
11 of a hearing before me on the above  
12 date and recommend the adoption of  
13 these proposed orders as the orders  
14 of the New Motor Vehicle Board.

15                    DATED: August 15, 2002

16                    By *Anthony M. Skrocki*  
17                    ANTHONY M. SKROCKI  
18                    Administrative Law Judge  
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25  
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27 Steven Gourley, Director, DMV  
28 Terri Thurlow, Chief,  
Licensing Branch, DMV