

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-2080

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

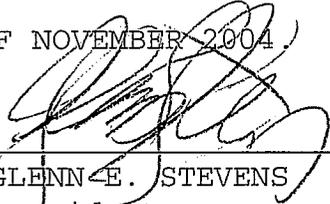
In the Matter of the Protest of)
RAY'S RVS, INC.,) Protest No. PR-1921-04
Protestant,)
v.)
ECLIPSE/ATTITUDE)
Respondent.)

DECISION

At its regularly scheduled meeting of November 4, 2004, the Public members of the Board met and considered the administrative record and Proposed Ruling Granting Respondent's Motion to Dismiss in the above-entitled matter. After such consideration, the Board adopted the Proposed Ruling as its final Decision in this matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 4th DAY OF NOVEMBER 2004.



GLENN E. STEVENS
President
New Motor Vehicle Board

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CERTIFIED MAIL

8 STATE OF CALIFORNIA

9 NEW MOTOR VEHICLE BOARD

11 In the Matter of the Protest of)
12 RAY'S RVS, INC.,)
13 Protestant,)
14 v.)
15 ECLIPSE/ATTITUDE)
16 Respondent.)

Protest No. PR-1921-04

PROPOSED RULING GRANTING
RESPONDENT'S MOTION TO
DISMISS PROTEST (VEHICLE CODE
SECTION 3070)

18 To: Ray Myers
In Pro Per
19 RAYS RVS
411 Glide Avenue
20 West Sacramento, California 95691

21 Matthew A. Hodel, Esq.
Michael S. Leboff, Esq.
Attorneys for Respondent
22 HODEL BRIGGS WINTER LLP
23 8105 Irvine Center Drive, Suite 1400
Irvine, California 92618-4930

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1 FACTUAL AND PROCEDURAL BACKGROUND

2 1. Protestant, Ray's RVS, Inc. (hereafter "Ray's"), is a seller
3 of recreational vehicles and has three locations. The locations are:
4 900 El Camino Ave., Sacramento, California ("Sacramento
5 location");
6 411 Glide Ave., West Sacramento, California ("West Sacramento
7 location"); and
8 4560 Central Ave., Fairfield, California ("Fairfield location").
9 (The pleadings at times refer to the Sacramento location and the West
10 Sacramento location as the "Sacramento locations".)

11 2. Respondent, the correct name of which is Eclipse
12 Recreational Vehicles, Inc. (hereafter "Eclipse"), is a manufacturer
13 of the "'Attitude' line of toy haulers, which are lightweight travel-
14 trailers used to carry items, such as dirt bikes or all-terrain
15 vehicles." (Trealoff Declaration, Page 5, lines 14-15)

16 3. On August 3, 2004, Ray's filed a protest with the New Motor
17 Vehicle Board (hereafter "Board") asserting Ray's alleged rights
18 pursuant to the provisions of California Vehicle Code section 3070.¹
19 In this protest, Ray's alleges that it was being terminated as an
20 Eclipse dealer at both the Sacramento location as well as the West
21 Sacramento location.²

22 4. On September 8, 2004, Eclipse filed "RESPONDENT ECLIPSE
23 RECREATIONAL VEHICLE, INC., 'S (sic) MOTION TO DISMISS PROTEST;
24 DECLARATION OF DALLEN TREALOFF; EXHIBITS".

25 _____
26 ¹ All statutory references are to the California Vehicle Code unless otherwise
27 indicated. The application of this specific section will be discussed more fully
below.

28 ² It is conceded by Eclipse that Ray's is a franchisee of Eclipse in regard to the
Fairfield location. Ray's is not contending that its franchise for the Fairfield
location is being terminated.

1 5. On September 24, 2004, Ray's filed "PROTESTANT RAYS RVS
2 INC., 'S (sic) OPPOSITION OF RESPONDENTS MOTION TO DISMISS PROTEST;
3 DECLARATION OF RAY MYERS; EXHIBITS".

4 6. On October 5, 2004, Eclipse filed "RESPONDENT ECLIPSE
5 RECREATIONAL VEHICLE, INC., 'S (sic) REPLY BRIEF IN SUPPORT OF MOTION
6 TO DISMISS PROTESTS".

7 7. On October 12, 2004, the Motion to Dismiss was heard before
8 Anthony M. Skrocki, Administrative Law Judge for the Board. Mr. Ray
9 I. Myers, President of Ray's RVS Inc., represented Protestant.
10 Michael S. LeBoff of the law firm of Hodel Briggs Winter LLP
11 represented Respondent.

12 CONTENTIONS OF ECLIPSE

13 8. Eclipse, in its Motion to Dismiss, asserts that Ray's does
14 not now and never has had a franchise to sell Eclipse products at the
15 Sacramento location and that Ray's does not now and never has had a
16 franchise to sell Eclipse products at the West Sacramento location.

17 9. Eclipse asserts that because there is no franchise in
18 existence for either the Sacramento or West Sacramento location, Ray's
19 has no standing to file a protest with the Board as to the claimed
20 right to sell Eclipse products at those two locations.

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1 ISSUE PRESENTED

2 WHETHER RAY'S HAS A FRANCHISE FOR EITHER LOCATION

3 Statutory Requirements

4 10. For Ray's to have a right, pursuant to Section 3070,³ to
5 protest the claimed termination of a franchise, there must first be a
6 "franchise" between Ray's and Eclipse pertaining to the locations at
7 issue.

8 11. Section 331(a) in part defines a "franchise" as follows: "A
9 'franchise' is a written agreement between two or more persons having
10 all of the following conditions: ..." (Emphasis added.)

11 12. To have standing to file a protest pursuant to Section 3070
12 Ray's must be a franchisee under the terms of a "written agreement"
13 with Eclipse.

14 Facts As To Whether There Is A Written Agreement Constituting A
15 Franchise For Either Location

16 13. Ray's did not provide a copy of any document that would
17 evidence a written agreement constituting a franchise for either the
18 Sacramento or West Sacramento location.

19 14. Ray's did not contend in its pleadings that there was a
20 written franchise agreement for either location.

21 15. Eclipse provided a declaration from Dallen Treloff, the
22 President and Chief Executive Officer of Eclipse. In it Mr. Treloff
23 stated that there is only one written "Sales Agreement" between
24 Eclipse and Ray's and that it "...expressly applied only to Ray's
25

26 ³ Section 3070 provides in part: "3070(a) Notwithstanding Section 20999.1 of the
27 Business and Professions Code or the terms of any franchise, a franchisor of a dealer
28 of new recreational vehicles, as defined in subdivision (a) of Section 18010 of the
Health and Safety Code, except a dealer who deals exclusively in truck campers, may
not terminate or refuse to continue a franchise unless all of the following
conditions are met:... (Emphasis added.)

1 Fairfield location". The Sales Agreement attached to the Declaration,
2 identified the franchisee as "Ray's RV's (sic) Inc., 4560 Central Way
3 (sic), Fairfield, California", and granted an exclusive market area as
4 follows:

5 "West to Napa
6 North 20 mi to Vacaville.
7 East to Dixon
8 South to Vallejo."

9 16. The Sales Agreement states, "Location - Dealer shall
10 maintain a place of business as (sic) the address specified, be open
11 during normal business hours, and have facilities for the display,
12 sale, repair and service of the Product. Any relocation within the
13 EMA (Exclusive Market Area) must have the prior written approval of
14 Manufacturer, which will not be unreasonably be (sic) withheld."

15 17. There is no reference in the Sales Agreement to any other
16 location.

17 18. Mr. Trealoff's Declaration also states, "I have never
18 authorized Ray's to sell Eclipse products from its Sacramento
19 locations. ...The only time I authorized Ray's to sell Eclipse
20 products in the Sacramento area was at the 51st Annual Sacto Sports
21 Boat and RV Show at 1600 Exposition Blvd in Sacramento. ...But, as
22 clearly stated in the OL124, Ray's authority to sell products with
23 (sic) expressly limited to that show, and only between February 13 and
24 16, 2004."

25 19. Mr. Myers, during the hearing on October 12, 2004, asserted
26 that there was an oral agreement between Ray's and Eclipse that Ray's
27 would be the Eclipse franchisee in the Sacramento area. However, Mr.
28 Myers candidly admitted that Ray's does not have a written franchise
with Eclipse for either the Sacramento or West Sacramento location.

1 CONCLUSION AS TO WHETHER THERE IS A "FRANCHISE" THAT WOULD GIVE
2 RAY'S STANDING TO FILE A PROTEST PURSUANT TO SECTION 3070

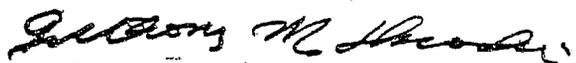
3 20. It is determined that there is no "written agreement" that
4 would constitute a "franchise" within the meaning of Section 331(a)
5 for either the Sacramento or the West Sacramento location. As to
6 these two locations, Ray's does not have standing to file a protest
7 pursuant to the provisions of Section 3070.

8 PROPOSED RULING

9 The Motion to Dismiss the Protest of Ray's RVS Inc. is granted.
10 Protest No. PR-1921-04 is dismissed with prejudice.

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13 I hereby submit the foregoing which
14 constitutes my proposed ruling in
15 the above-entitled matter, as the
16 result of a hearing before me and I
17 recommend this proposed ruling be
18 adopted as the decision of the New
19 Motor Vehicle Board.

20 DATED: October 15, 2004

21 
22 By: _____
23 ANTHONY M. SKROCKI
24 Administrative Law Judge
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Chon Gutierrez, Director, DMV
Mary Garcia, Manager
Occupational Licensing, DMV