

NEW MOTOR VEHICLE BOARD
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of
MEGA RV CORP. dba MCMAHONS RV,

Protestant,

v.

ROADTREK MOTORHOMES, INC.,

Respondent.

Protest Nos. PR-2205-10, PR-2206-10

In the Matter of the Protest of
MEGA RV CORP. dba MCMAHONS RV,

Protestant,

v.

ROADTREK MOTORHOMES, INC.,

Respondent.

Protest Nos. PR-2207-10, PR-2210-10

In the Matter of the Protest of
MEGA RV CORP. dba MCMAHONS RV,

Protestant,

v.

ROADTREK MOTORHOMES, INC.,

Respondent.

Protest Nos. PR-2208-10, PR-2212-10

In the Matter of the Protest of
MEGA RV CORP. dba MCMAHONS RV,

Protestant,

v.

ROADTREK MOTORHOMES, INC.,

Respondent.

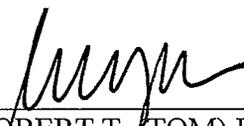
Protest Nos. PR-2209-10, PR-2211-10

DECISION

At its regularly scheduled meeting of May 5, 2010, the Public and Dealer Members of the Board met and considered the administrative record and Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss Protest Nos. PR-2207-10 and PR-2210-10" in the above-entitled matter. After such consideration, the Board adopted the Proposed Order.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 5th DAY OF MAY 2010.



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

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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 MEGA RV CORP. dba MCMAHONS RV,
13 Protestant,
14 v.
15 ROADTREK MOTORHOMES, INC.,
16 Respondent.

**Protest Nos. PR-2205-10, PR-2206-10
ORDER DENYING RESPONDENT'S
MOTION TO DISMISS PROTEST
NOS. PR-2205-10, PR-2206-10, PR-
2208-10, PR-2209-10, PR-2211-10, AND
PR-2212-10**

17 In the Matter of the Protest of
18 MEGA RV CORP. dba MCMAHONS RV,
19 Protestant,
20 v.
21 ROADTREK MOTORHOMES, INC.,
22 Respondent.

**Protest Nos. PR-2207-10, PR-2210-10
PROPOSED ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS PROTEST NOS. PR-2207-10
AND PR-2210-10**

23 In the Matter of the Protest of
24 MEGA RV CORP. dba MCMAHONS RV,
25 Protestant,
26 v.
27 ROADTREK MOTORHOMES, INC.,
28 Respondent.

Protest Nos. PR-2208-10, PR-2212-10

1 In the Matter of the Protest of
2 MEGA RV CORP. dba MCMAHONS RV,
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4 Protestant,
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6 v.
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8 ROADTREK MOTORHOMES, INC.,
9
10 Respondent.
11

Protest Nos. PR-2209-10, PR-2211-10

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19 **PROCEDURAL BACKGROUND**

20 1. Protestant, Mega RV Corp., dba McMahan's RV ("McMahon's"), is a new motor vehicle
21 dealer as defined in Vehicle Code section 426¹, and is licensed as such by the Department of Motor
22 Vehicles ("DMV").

23 2. Respondent, Roadtrek Motorhomes, Inc. ("Roadtrek"), with its head office at 100 Shirley
24 Avenue, Kitchener, Ontario, Canada N2B 2E1, is a division of Hanmar Motor Corporation, a company
25 incorporated under the laws of the Province of Ontario. Roadtrek is licensed by the DMV as a

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28 ¹ Unless otherwise indicated, all later statutory references shall be to the California Vehicle Code.

1 manufacturer.²

2 3. McMahon's operates recreational vehicle (RV)³ dealerships at the following locations in
3 issue:⁴

4 a. 5060 Scotts Valley Road, Scotts Valley, California 95066 (PR-2209-10 and PR-2211-10)
5 ("McMahon's Scotts Valley");

6 b. 1312 RV Center Drive, #12, Colton, California 92324 (PR-2205-10 and PR-2206-10)
7 ("McMahon's Colton");

8 c. 77840 Varner Road, Palm Desert, California 92211 (PR-2207-10 and PR-2210-10)
9 ("McMahon's Palm Desert"); and,

10 d. 6441 Burt Road, #10, Irvine, California 92618 (PR-2208-10 and PR-2212-10)
11 ("McMahon's Irvine").

12 4. On February 23, 2010, pursuant to stipulation of counsel and by order of the Board, these
13 protests were consolidated for purposes of hearing.

14 5. On March 18, 2010, Roadtrek filed a Motion to Dismiss all of the consolidated protests.

15 6. On April 7, 2010, after the submission of briefs by each side, a hearing on the Motion to
16 Dismiss was held before Administrative Law Judge ("ALJ") Anthony M. Skrocki.

17 **THE ALLEGATIONS OF THE EIGHT PROTESTS FILED BY MCMAHON'S**

18 7. There were two protests filed for each of the four dealerships, one for each dealership filed
19 pursuant to Section 3076 (franchisor incentive program reimbursement) and one for each dealership filed
20 pursuant to Section 3075 (warranty reimbursement). Each protest alleged a failure on the part of
21 Roadtrek to pay the money owed as required by the statutes.

22
23 ² Section 672 defines "vehicle manufacturer" as follows:

24 (a) "Vehicle manufacturer" is any person who produces from raw materials or new basic components a vehicle of a
25 type subject to registration under this code, off-highway motorcycles or all-terrain vehicles subject to identification
under this code..."

26 ³ Section 415(c) provides: (c) For purposes of Chapter 6 (commencing with Section 3000) of Division 2, "motor vehicle"
27 includes a recreational vehicle as that term is defined in subdivision (a) of Section 18010 of the Health and
Safety Code, but does not include a truck camper.

28 ⁴ The Protests are listed here in order of the Protest numbers assigned to them. However, the order of discussion below will
be based upon the facts and issues raised by the motion to dismiss.

1 THE MOTION TO DISMISS THE EIGHT PROTESTS

2 8. Roadtrek filed one Motion to Dismiss challenging all eight of the protests.

3 9. As to the protests filed in behalf of McMahon's Colton, McMahon's Irvine, and
4 McMahon's Scotts Valley, the Motion to Dismiss asserted that the protests failed to assert specific facts
5 to enable Roadtrek to respond and defend against the assertions, as well as a failure to specify the time
6 periods involved.

7 10. As to the protests filed in behalf of McMahon's Palm Desert, the motion asserted that
8 McMahon's Palm Desert is not a franchisee as there is no written franchise between the parties. This
9 portion of the motion incorporated by reference the arguments contained in the Motion to Dismiss the
10 protest of McMahon's Palm Desert in PR-2200-10.

11 11. There is no dispute that McMahon's Colton, McMahon's Irvine, and McMahon's Scotts
12 Valley are franchisees of Roadtrek. However, Roadtrek asserts that McMahon's Palm Desert is not a
13 Roadtrek franchisee

14 ORDER DENYING RESPONDENT'S MOTION TO DISMISS THE PROTESTS OF
15 MCMAHON'S COLTON, MCMAHON'S IRVINE, AND MCMAHON'S SCOTTS VALLEY

16 12. As was suggested by Roadtrek and concurred in by the ALJ, counsel for these Protestants
17 agreed to amend the protests by submitting specific information as to the claims asserted in the six
18 protests filed in their behalf. Respondent's Motion to Dismiss the protests of McMahon's Colton (PR-
19 2205-10 and PR-2206-10), McMahon's Irvine (PR-2208-10 and PR-2212-10), and McMahon's Scotts
20 Valley (PR-2209-10 and PR-2211-10) is denied. These protests shall proceed with a hearing on the
21 merits and the Board staff will expeditiously set a telephonic Pre-Hearing Conference.

22 PROPOSED ORDER GRANTING RESPONDENTS MOTION TO DISMISS
23 MCMAHON'S PALM DESERT

24 13. The issue of whether McMahon's Palm Desert is a franchisee was discussed in the
25 Proposed Order regarding Protest No. PR-2200-10 in which it was determined that there was nothing to
26 establish a "franchise", as that term is defined in Section 331, between McMahon's Palm Desert and
27 Roadtrek. The discussion and Proposed Order in Protest No. PR-2200-10 are incorporated herein by

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1 reference.⁵

2 14. As no franchise has been established, the Board has no jurisdiction over the protests filed
3 in behalf of McMahon's Palm Desert.

4 15. After consideration of the pleadings, exhibits, and oral arguments of counsel, it is hereby
5 ordered that Respondent's Motion to Dismiss Protest is granted with respect to *Mega RV Corp dba*
6 *McMahon's RV v. Roadtrek Motorhomes, Inc.*, (McMahon's Palm Desert), Protest Nos. PR-2207-10 and
7 PR-2210-10 and the protests are dismissed without prejudice. If McMahon's Palm Desert can establish
8 there is a written agreement constituting a "franchise" in existence, the protest may be re-filed.

9
10 I hereby submit the foregoing which constitutes my
11 proposed order in the above-entitled matter, as the
12 result of a hearing before me, and I recommend this
13 proposed order be adopted as the decision of the
14 New Motor Vehicle Board.

15 DATED: April 19, 2010

16 

17 By: _____
18 ANTHONY M. SKROCKI
19 Administrative Law Judge

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22
23 George Valverde, Director, DMV
24 Mary Garcia, Branch Chief,
25 Occupational Licensing, DMV

26 ⁵ Protestant also filed four Section 3070 modification protests for each dealership (PR-2198-10, PR-2199-10, PR-2100-10, and
27 PR-2101-10). A "Proposed Order Granting Respondent's Motion to Dismiss Consolidated Protests with Respect to PR-2198-
28 10" (McMahon's Scotts Valley) and "Proposed Order Granting Respondent's Motion to Dismiss Protest (PR-2200-10)"
(McMahon's Palm Desert) is being considered by the Board at its May 5, 2010, General Meeting. Respondent's motion to
dismiss with respect to McMahon's Colton (PR-2199-10) and McMahon's Irvine (PR-2201-10) was denied.