

1 NEW MOTOR VEHICLE BOARD  
1507 - 21st Street, Suite 330  
2 Sacramento, California 95814  
Telephone: (916) 445-1888  
3

4 CERTIFIED MAIL

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7  
8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD

10  
11 In the Matter of the Petition of )  
12 FRANCES HOLMES and MARVIN HOLMES ) Petition No. P-260-93  
13 Petitioner, )  
14 vs. ) DECISION  
15 AMERICAN HONDA MOTOR CO., INC. )  
16 Respondent. )

17  
18 TO: Robert F. Brennan, Esq.  
19 Attorney for Petitioner  
6255 Sunset Boulevard  
Suite 2000  
20 Los Angeles, California 90028-7421

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22 Patricia M. Coleman, Esq.  
23 Attorney for Respondent  
Grace, Skocypec, Cosgrove & Schirm  
5700 Wilshire Boulevard  
Suite 300N  
24 Los Angeles, California 90036

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26 At its regularly scheduled meeting of June 14, 1994, the public  
27 members of the New Motor Vehicle Board met and considered the above-  
28 referenced petition. After such consideration, the public members of

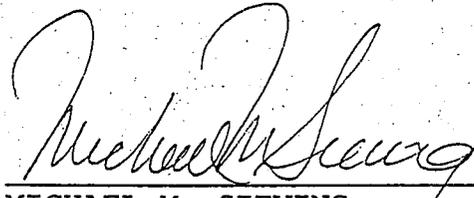
1 the Board reached the following decision:

2 The attached Proposed Decision of the Administrative Law Judge is  
3 hereby adopted by the New Motor Vehicle Board as its Decision in the  
4 above-entitled matter with the following modification:

5 American Honda Motor Company, Inc. shall issue it draft or check  
6 payable to Petitioners Francis Holmes, Marvin Holmes, and their  
7 attorney, Robert Brennan, Esq., in the amount of \$13,270.60. Said  
8 draft or check shall be delivered to and held by the New Motor Vehicle  
9 Board until such time as Petitioners or their attorney tender to the  
10 Board the \$200.00 filing fee as required by Title 13 California Code of  
11 Regulations section 553.40.

12 This Decision shall become effective forthwith.

13 IT IS SO ORDERED THIS 17th day of June, 1994.

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17 MICHAEL M. SIEVING  
18 Administrative Law Judge/  
19 Assistant Executive Secretary

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25  
26 Frank Zolin, Director, DMV  
27 Mario Balbiani, Program Manager,  
28 Occupational Licensing, DMV

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5 STATE OF CALIFORNIA

6 NEW MOTOR VEHICLE BOARD

7 In the Matter of the Petition of )

8 FRANCES HOLMES AND MARVIN HOLMES, )

9 Petitioners, )

10 vs. )

11 AMERICAN HONDA MOTOR CO., INC., a )  
12 Corporation, )

13 Respondent. )  
14

Petition No. P-260-93

PROPOSED DECISION OF THE  
ADMINISTRATIVE LAW JUDGE

15  
16 PROCEDURAL BACKGROUND

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18 1. This petition was filed with the Board on June 24, 1993,  
pursuant to an order of the Los Angeles County Superior Court.

19  
20 2. Petitioners Frances Holmes and Marvin Holmes are persons  
concerned with the activities of a new motor vehicle licensee of  
21 the California Department of Motor Vehicles.

22  
23 3. Respondent is American Honda Motor Company, Inc. (*Honda*),  
a corporation licensed by the California Department of Motor  
24 Vehicles as a new motor vehicle distributor.

25  
26 4. This petition involves a claim by Petitioners against  
Respondent under California Civil Code Section 1790, et seq. (the  
27 Song-Beverly Consumer Warranty Act), and other consumer protection  
28

1 law. In brief, Petitioners allege that they purchased a new motor  
2 vehicle from Respondents and that the vehicle had a defective  
3 braking system. Petitioners claim that Honda has been unable to  
4 adequately repair the system after multiple attempts. Petitioners  
5 seek recovery of the purchase price of \$19,894.82 and other damages  
6 as well as attorney's fees and costs as provided by statute.

7 5. The matter was set for hearing on Wednesday,  
8 January 24, 1994, in Los Angeles, California. After consultation  
9 with the Administrative Law Judge immediately before the hearing  
10 opened, the parties reached an agreement disposing of all but one  
11 of the issues in the case.

12 6. The Hearing was then opened for the limited purpose of  
13 reading a summary of the parties' agreement into the record of the  
14 proceeding. The issue not resolved was submitted for determination  
15 of the Board on the filing of supplemental final briefs on  
16 February 1, 1994. No other evidence or testimony was taken.

17 7. This decision, when effective, will constitute a final  
18 resolution of the petition.

19 ISSUE PRESENTED

20 8. In their pre-hearing accord, the parties agreed, among  
21 other things, that Honda would pay the Holmes' reasonable attorney  
22 fees and costs as determined by the Board within the range between  
23 a low of \$9,500 and a high of \$16,050.35. Therefore, the sole  
24 issue presented by this petition is the amount of reasonable  
25 attorney's fee and costs to be paid by Honda to Petitioners.

26 CONTENTIONS OF THE PARTIES

27 9. Petitioners' counsel, Mr. Brennan, requests that his  
28 clients be awarded the sum of \$15,580.35. This figure includes

1 costs of \$1,668.10 and \$13,912.25 for 65.55 hours of professional  
2 services rendered as set forth in Mr. Brennan's itemized invoice  
3 and memorandum of costs. Mr. Brennan states that he personally  
4 worked 46.1 hours on the case. His hourly rate was \$200 per hour  
5 initially and was subsequently raised to \$235. Two other attorneys  
6 made appearances on behalf of the Holmes' on occasions when Mr.  
7 Brennan was unavailable due to schedule conflicts. This work was  
8 included in the billing at \$175 per hour for 3 hours and \$225 per  
9 hour for 12.25 hours. The services of two paralegals at rates of  
10 \$75 for 1 hour and \$85 per hour for 3.2 hours are included in the  
11 professional service fee.

12 10. Mr. Brennan claims that his fee is reasonable because he  
13 is a specialist in consumer litigation. His fee was increased  
14 during this proceeding because of his increasing expertise and  
15 volume of business. Nothing was offered in support of the  
16 reasonableness of the fees billed on behalf of the two other  
17 attorneys except that one of them had over twenty years experience  
18 as a member of the California Bar.

19 11. Respondent challenges both the reasonableness of the  
20 hourly rates and the 65.55 billed hours. Respondent specifically  
21 disputed 21 of the total 57 entries on the invoice and urged that  
22 the Board find that the hourly rates should be no higher than those  
23 charged by Respondent's own attorney, e.g., \$135 per hour for  
24 counsel and \$75 per hour for paralegal service.

25 FINDINGS OF FACT AND CONCLUSIONS OF LAW

26 Based on consideration of the briefs filed in this matter, the  
27 following findings and conclusions are made:

28 12. Petitioners' request for \$1,668.10 in litigation costs

1 incurred is reasonable.

2 13. In light of Mr. Brennan's consumer litigation  
3 specialization, an hourly rate \$200 per hour for his services is  
4 reasonable.

5 14. The increases in Mr. Brennan's fee which he initiated  
6 after he began representing Mr. and Mrs. Holmes are unreasonable.

7 15. The hourly rates for the attorneys who appeared when Mr.  
8 Brennan was unavailable are unreasonable in that no evidence was  
9 offered that they also possess Mr. Brennan's consumer law expertise.  
10 The reasonable hourly rate for these services is \$135 per hour.

11 16. The items in Mr. Brennan's invoice dated  
12 November 1, 1993, were incurred because Mr. Brennan was unavailable  
13 for a telephonic conference scheduled by the Board. The 0.4 hour  
14 charge is unreasonable.

15 17. In all other respects the Holmes' request for  
16 reimbursement is reasonable.

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