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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

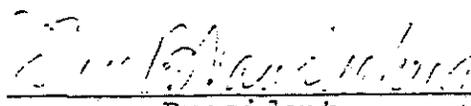
In the Matter of the Protests of)
)
VEL'S PARNELLI JONES FORD,) Protest No. PR-110-76
A Corporation, and)
)
LEON AMES FORD,) Protest No. PR-111-76
A Corporation,)
)
Franchisee-Protestants,)
)
vs.)
)
FORD DIVISION, FORD MOTOR COMPANY,)
)
Franchisor-Respondent.)
)
)
)
)

DECISION

The attached Proposed Decision of the Hearing Officer is hereby adopted by the NEW MOTOR VEHICLE BOARD as its Decision in the above-entitled matter.

This decision shall become effective forthwith.

IT IS SO ORDERED December 14, 1976.



President
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F I L E D

New Motor Vehicle Board

Date October 27, 1976

By Jacqueline S. Powell

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the matter of the Protest of)
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 VEL'S PARNELLI JONES FORD,)
 A CORPORATION)
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 Franchisee-Protestant)
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 vs.)
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 FORD DIVISION, FORD MOTOR COMPANY,)
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 Franchisor-Respondent)

PROTEST NO. PR-110-76
 Filed July 20, 1976

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 LEON AMES FORD, A CORPORATION,)
)
 Franchisee-Protestant)
)
 vs.)
)
 FORD DIVISION, FORD MOTOR COMPANY,)
)
 Franchisor-Respondent)

PROTEST NO. PR-111-76
 Filed July 20, 1976

PROPOSED DECISION

The above two cases were consolidated for the purpose of hearing and decision. Pursuant to notice, the above cases came on for hearing before Administrative Law Judge George C. Woodmansee on October 4, 1976, in Los Angeles, California.

Protestant Vel's Parnelli Jones Ford (Case No. PR-110-76) was represented by Charles R. Duffy, Attorney with Boller, Suttner and Gekas.

Protestant Leon Ames Ford (Case No. PR-111-76) was also represented by Attorney Duffy.

Ford Division of Ford Motor Company, the Franchisor-Respondent in both cases was represented by F. Bruce Kulp, Senior Attorney in the Office of the General Counsel for said company.

Oral and documentary evidence was received and the record was held open to permit the parties to file briefs. Upon receipt of briefs from the Protestants and the Respondent, the matter was submitted.

FINDINGS OF FACT:

Vel's Parnelli Jones Ford, hereinafter referred to as Vel's, the Franchisee-Protestant in Protest No. PR-110-76, received a letter on July 10, 1976, from Ford Division, Ford Motor Company, hereinafter referred to as Ford, the Franchisor-Respondent, stating that the Franchisor proposes to relocate Frank Coletto Ford, hereinafter referred to as Coletto, from its present location at 1553 S. Pacific, San Pedro, to facilities on Pacific Coast Highway and Normandie Avenue in Harbor City. On July 20, 1976, Vel's formally protested the proposed move under Sections 3062, 3063, and 3066 of the California Vehicle Code.

Leon Ames Ford, hereinafter referred to as Ames, the Franchisee-Protestant in Protest No. PR-111-76, also received a letter from Ford on July 10, 1976, proposing the relocation of Coletto as set forth above. On July 20, 1976, Ames also protested the proposed move under Sections 3062, 3063, and 3066 of the California Vehicle Code.

Both of the Protestants are within a ten mile radius of Coletto. The distance from the San Pedro address to the Harbor City proposed location for Coletto is approximately four miles in a northerly direction.

By highway, Coletto is approximately ten miles from Vel's (8.5 airline miles) and the new location will be approximately six highway miles (4.5 airline miles) distant.

By highway Coletto is approximately 9.5 miles from Ames (7.7 airline miles), and the new location will be approximately 5.4 miles (5 airline miles) distant.

Ames is located approximately 4.5 miles by highway (2-1/4 airline miles) from Vel's.

Each Ford dealer or Franchisee is in a potential market area called a "Dealer's Locality" in which is the "Dealer's Sales and Service responsibility for company products." After an analysis is made, the Franchisor establishes what is called a primary market area in which each Franchisee is considered most likely to predominate in sales and service. The dealers are not limited to their respective primary market areas and consequently they "cross sell" in other dealers' areas. Don Kott Ford, hereinafter referred to as Kott, is located in Carson but is not a party to these proceedings. For

example, in the area commonly known as the South Bay area of Los Angeles, the four dealers located therein for 1973-74 sold in their respective primary market areas, and the percent of crossover sales in each is shown as follows:

<u>Primary Market</u> <u>Units Sold</u>		<u>Crossover Sales</u>					
Ames	1293 (30.3%)	Vel's	11.8%	Coletto	5.0%	Kott	7.4%
Vel's	1166 (23.2%)	Ames	19.6%	Coletto	3.9%	Kott	7.8%
Coletto	1043 (42.7%)	Vel's	4.4%	Ames	6.9%	Kott	22.0%
Kott	1537 (26.1%)	Vel's	9.7%	Coletto	6.2%	Ames	8.2%

In an area substantially bounded by the primary market areas of the above four dealers (Franchisees), the sales for each of the two Protestant Franchisees for the years 1971-1976 are shown as follows:

<u>Year</u>	<u>Ames</u>	<u>Vel's</u>	<u>All Other Dealers</u>	<u>Total</u>
1971	888	696	3990	5575
1972	1045	868	4561	6474
1973	1005	906	5082	6993
1974	873	603	3517	4993
1975	589	494	2222	3305
7 Mos. 1976	348	299	1890	2537

It should be pointed out that the above figures are for the specific area under survey. For example, the following sales are reported by Ames for its entire dealership:

<u>Year</u>	<u>Total Units Sold</u>
1971	1128
1972	1315
1973	1448
1974	1395
1975	835
7 Mos. 1976	598

Thus, a substantial crossover in sales is disclosed.

"Planning Volume" is an estimated sales base for cars and trucks established by the Franchisor from time to time for planning purposes but shall not represent actual sales volumes to be achieved in order to comply with the franchise agreement.

The planning volume constitutes a guide in planning facilities, inventories, personnel, demonstrators, and other elements for the dealership operations. Suggested working capital is thus varied by the planning volume as a standard procedure.

While Ford has outsold Chevrolet in the South Bay area, foreign car sales have made a tremendous impact and constitute approximately 35% of the new car sales made in the past two years. The decline in new car sales was attributed not only to the foreign car expansion but also to the energy crisis which began in the fall of 1973.

I

Vel's is a corporation in which Parnelli Jones has a 25% interest. Vel Miletich, the President and majority stockholder, acquired a Ford dealership in 1949. This agency was moved from 1420 Cabrillo Avenue in Torrance to its present location at 20900 Hawthorne Boulevard, Torrance (Zip 90503) in 1962. Mr. Miletich is the owner of the land and buildings, for which he charges the dealership a rental of \$17,000.00 per month. Additionally, the corporation has an investment of \$316,911.00 in leasehold improvements and \$257,000.00 in equipment. Based on present values, Mr. Miletich estimated he had a total investment in land and buildings of approximately \$3,000,000.00.

Vel's had been termed a "Distinguished Dealer" but was not so honored in 1974, 1975, or 1976. Sales volume went down, as did his service. Although making a profit, the controlling factor was the profit on selling finance and insurance. The current planning volume estimated by the factory has been revised from 1499 cars and trucks in 1975 to 1715 cars and trucks for 1976. Because of the increased planning volume, the working capital suggested by the factory has been increased to \$797,420.00.

Mr. Miletich contended that his dealership suffered a 25% loss in sales volume in all departments when Kott moved from Wilmington to his present location in Carson in 1974. It was his further opinion that his sales volume would be reduced another 10% to 20% if the Coletto dealership was moved from San Pedro to Harbor City.

~~If the Coletto move is made, a proposed realignment of~~
the primary market area for Vel's would be reduced in the Harbor City area. However, a review of prior sales by Vel's in the Harbor City area, coupled with the relatively low density of population, traffic patterns, car registrations, and low family income leads to a conclusion that the impact on Vel's sales would be a loss of about 40 units. The relocation of Kott in 1974 may have had some adverse impact on Vel's sales, but that is not an issue in this proceeding. Additionally, all Ford dealers suffered a substantial decline in sales in 1974 and 1975.

II

Leon Ames Ford is a corporation in which Fred E. Hitchcock, Jr., is Vice-President and General Manager. Since 1969, Mr. Hitchcock has had a stock interest in the corporation at a current value of \$185,000.00, and in addition he owns the land and buildings at 1840 S. Pacific Coast Highway, Redondo Beach (Zip 90277), where the dealership is located. This real estate investment in 1973 cost \$1,435,000.00. As of August 31, 1976, the working capital of the dealership was \$424,861.00.

Ames was honored with a Distinguished Dealer Award in 1971, 1972, and 1973. The award was not received in 1974 and 1975 due to reduced profitability. The award is based on Sales, Profits, Warranty Expense, Parts and Service.

The planning volume was revised from 1666 units in 1975 to 2135 units in 1976. Accordingly, there was a corresponding increase in the working capital requirement.

It was the opinion of Mr. Hitchcock that the relocation of Coletto would reduce his sales volume from 10% to 25%. He contended that the flow of traffic from the Palos Verdes Peninsula and Torrance (portions of his primary market area) is mostly directed away from his current location and will more evenly flow up Hawthorne Boulevard into Torrance or down Pacific Coast Highway to Harbor City and the Harbor Freeway.

If the Coletto move is made, a proposed realignment of the primary market area for Ames would be increased by adding an eastern section of the Palos Verdes Peninsula. This additional market area would not alter the flow of traffic. The relationship between the traffic flow and new car sales, if any, was not set forth. A review of the crossover sales of Coletto and Ames indicates that the impact on Ames would be minimal. Ford suggests that there might be an increase of five units in the planning volume.

III

~~Frank P. Coletto has been a Ford dealer in San Pedro since 1969. He purchased the facilities from Charles Soderstrom, who was the former Ford dealer but is now deceased. The present facilities are at 15th and Pacific for sales, 16th and Pacific for service, and across the street for a body shop, and another portion for car leasing.~~

The property used for car leasing is currently being leased from the owner and has two and a half years to go. The owner of the property used as a body shop served a notice to quit in August and Coletto moved the body shop behind the leasing facility. He has been

cited by the authorities that this is an improper use of the land. The property on which the service department is located has been sold and is in escrow. The new owner wants to use this property for his business. The showroom property was sold to a new owner who has raised the rent from \$1346.00 to \$1800.00 per month.

During the years 1973 to 1976, Coletto sold as follows:

1973	1282 units
1974	1077 units
1975	571 units
7 Mos. 1976	324 units

With the completion of the Harbor Freeway to San Pedro, Pacific Avenue, where Coletto is located, is no longer heavily travelled. Coletto is the only new car dealer remaining in San Pedro. Unless the contemplated move is approved, Coletto will probably discontinue his dealership in San Pedro. After taking over the San Pedro location, Coletto declined to make any long term commitments for the property because it was a "dying area".

Coletto has actively explored the area for a new location and about seven months ago he seriously considered the proposed location in Harbor City. The Harbor City location is presently occupied by a Fiat dealer on one side of the street and a Volkswagen dealer across the street, on which a proposed 10 year lease or sale is pending. Coletto also plans to buy an adjoining two acres. The new facility will give Coletto substantially more space for sales, service, parts, and storage. Coletto contended that he would be able to render better and quicker service to Ford customers, he would have access to better service personnel, he would be able to serve a lot more people, and his customers would have easy access to his location.

The present planning volume for Coletto is 1585 units. The planning volume for the proposed location was 2090 units.

CONCLUSIONS OF LAW

Section 3062 of the California Vehicle Code provides in essence for a notice by a franchisor to each franchisee in a relevant market area of an intention to establish a new dealership or to relocate an existing dealer in that market area. Franchisees in the area may protest such action. Provision for a hearing on such protest(s) is set forth in Section 3066 of the Code.

Section 3066 of the Code further provides: ".... (b) In any hearing on a protest filed pursuant to Section 3060 or 3062, the franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing or relocating an additional motor vehicle dealership"

Section 3063 of the Code provides the following guidelines in determining "good cause":

"In determining whether good cause has been established for not entering into or relocating an additional franchise for the same line-make, the Board shall take into consideration the existing circumstances, including, but not limited to:

- (1) Permanency of the investment.
- (2) Effect on the retail motor vehicle business and the consuming public in the relevant market area.
- (3) Whether it is injurious to the public welfare for an additional franchise to be established.
- (4) Whether the franchisees of the same line-make in that relevant market are providing adequate competition and convenient consumer care for the motor vehicles of the same line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel.
- (5) Whether the establishment of an additional franchise would increase competition and therefore be in the public interest."

Applying the above tests to the proposed relocation of Coletto, it is concluded:

1. Each of the Protestants is well established with a substantial investment in both the real property and dealership facilities. On the other hand, Coletto's present dealership is in serious jeopardy because of the sale of portions of the real property to various outside interests who wish to take possession thereof. If the Coletto agency is relocated, the proposed facilities will be substantially improved with a ten year lease plus a purchase of an additional two acres. Thus, the relative permanency of the investment would be assured.

2. The relocation of Coletto would remove his dealership from an area of diminishing traffic for automobile sales and service into a location where better service can be rendered to its customers. This may increase his new car sales by providing greater accessibility to his primary market area. It is estimated that the move will not have a material adverse effect upon Ames. Vel's would suffer only a minor loss in its primary market and the loss is statistically a poorer area than Vel's established market, which will be retained.

3. The relocation of Coletto would not be injurious to the public welfare because (a) The present location of the Coletto agency is to be utilized by the landowners who wish to make their own improvements, and (b) The new Coletto location will better serve the public with larger facilities and greater accessibility.

4. The Protestants are adequately caring for the customers in their respective primary market areas. However, such services would be inadequate and inconvenient for the customers in Coletto's market area.

5. The issue here is a relocation, not the establishment of an additional franchise. The new location could increase competition, especially for service, in the South Bay area and thus be in the public interest.

DECISION

The protest of Vel's Parnelli Jones Ford is overruled. Good cause has not been established for denying the relocation of Coletto Ford (Case No. PR-110-76).

The protest of Leon Ames Ford is overruled. Good cause has not been established for denying the relocation of Coletto Ford (Case No. PR-111-76).

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matters as a result of the hearings had before me on October 4, 5, and 6, 1976, in Los Angeles, California, and recommend its adoption as the decision of the New Motor Vehicle Board.


GEORGE C. WOODMANSEE
Administrative Law Judge as hearing
officer for the Board

Dated: *October 27, 1976.*

GCW/dl