

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

NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of)
)
COAST MOTORS, INC., dba)
RANCHO OLDSMOBILE/SAAB/LOTUS,)
)
Protestant,)
vs.) **CONSOLIDATED PROTEST NOS.**
) **PR-1517-96, PR-1522-96**
SAAB CARS USA, INC.,)
)
Respondent.)
_____)
COAST MOTORS, INC., dba)
RANCHO OLDSMOBILE/SAAB/LOTUS,)
)
Protestant,)
vs.)
)
OLDSMOBILE DIVISION, GENERAL)
MOTORS CORPORATION,)
)
Respondent.)
_____)

DECISION

The attached Proposed Decision of the Administrative Law Judge was considered by the Public members of the New Motor Vehicle Board at its special meeting of December 13, 1996. After such consideration, the Public members of the Board adopted the Proposed Decision as its Decision in the above entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 13th day of December 1996.



MANNING J. POST
President Emeritus
New Motor Vehicle Board

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9 In the Matter of the Protest of) Protest No. PR-1517-96
10 COAST MOTORS, INC. dba RANCHO)
11 OLDSMOBILE/SAAB/LOTUS,)
12 Protestant,)
13 vs.)
14 SAAB CARS USA, INC.,)
15 Respondent.)

16 COAST MOTORS, INC. dba RANCHO) Protest No. PR-1522-96
17 OLDSMOBILE/SAAB/LOTUS,)
18 Protestant,) PROPOSED DECISION
19 vs.)
20 OLDSMOBILE DIVISION, GENERAL)
21 MOTORS CORPORATION,)
Respondent.)

22
23
24 PROCEDURAL BACKGROUND

25 1. By letter dated March 18, 1996, Saab Cars USA, Inc.
26 ("Saab") gave notice to Coast Motors, Inc., dba Rancho
27 Oldsmobile/Saab/Lotus ("Rancho Saab"), pursuant to Vehicle Code

1 Section 3060,¹ of Saab's intention to terminate the Saab Dealer
2 Sales and Service Agreement. The notice of termination was
3 received by the Board on March 21, 1996.

4 2. Rancho Saab is a licensed new motor vehicle dealer
5 enfranchised to sell Saab vehicles. Rancho Saab is located at
6 8104 Clairemont Mesa Boulevard, San Diego, California.

7 3. James J. Williams ("Williams") is the dealer principal
8 of Rancho Saab.

9 4. Saab is a distributor of new motor vehicles in
10 California.

11 5. Rancho Saab filed a Protest on April 22, 1996 with the
12 New Motor Vehicle Board ("Board"), pursuant to § 3060. The Board
13 assigned Protest No. PR-1517-96.

14 6. By letter dated April 29, 1996, Oldsmobile Division,
15 General Motors Corporation ("Oldsmobile") gave notice to Coast
16 Motors, Inc., dba Rancho Oldsmobile/Saab/Lotus ("Rancho
17 Oldsmobile"), pursuant to Vehicle Code Section 3060, of
18 Oldsmobile's intention to terminate the Oldsmobile Dealer Sales
19 and Service Agreement. The notice of termination was received by
20 the Board on May 6, 1996.

21 7. Rancho Oldsmobile is a licensed new motor vehicle
22 dealer enfranchised to sell Oldsmobile vehicles. Rancho
23 Oldsmobile is located at 8104 Clairemont Mesa Boulevard, San
24 Diego, California.

25 8. Williams is the dealer principal of Rancho Oldsmobile.

26
27 ¹ All statutory references are to the Vehicle Code unless
28 otherwise noted.

1 9. Oldsmobile is a manufacturer and distributor of new
2 motor vehicles in California.

3 10. Rancho Oldsmobile filed a Protest on June 6, 1996 with
4 the Board, pursuant to § 3060. The Board assigned Protest No.
5 PR-1522-96.

6 11. On June 24, 1996, the Board issued an Order
7 Consolidating PR-1517-96 and PR-1522-96 for the purposes of
8 hearing.

9 12. On August 19, 1996, Protestants filed with the Board a
10 Motion for Change of Venue to San Diego County, or alternatively,
11 Los Angeles County.

12 13. Administrative Law Judge Douglas H. Drake issued an
13 Order on August 19, 1996, denying Protestants' Motion to change
14 the venue of the hearing.

15 14. A four (4) day hearing was held before Douglas H.
16 Drake, Administrative Law Judge, commencing on August 21, 1996
17 and ending on August 27, 1996.

18 15. Protestants were represented by Kenneth J. Murphy, Esq.
19 and Michelle McAloon, Esq. of Arter & Hadden, 700 South Flower
20 Street, Suite 3000, Los Angeles, California.

21 16. Respondents were represented by Wallace M. Allan, Esq.
22 and Gregory R. Oxford, Esq. of O'Melveny & Myers, 400 South Hope
23 Street, Los Angeles, California.

24 17. Respondent Saab was also represented by Michael E.
25 Rovinski, Esq., Saab Cars USA, Inc., 4405-A Saab Drive, Norcross,
26 Georgia.

27 ///

28

1 18. Respondent Oldsmobile was also represented by L. Joseph
2 Lines, III, Esq., General Motors Corporation, 3031 West Grand
3 Boulevard, P.O. Box 33122, Detroit, Michigan.
4

5 CONTENTIONS OF THE PARTIES

6 19. Protestants contend that the word "conviction" means
7 that the dealer principal must suffer a "judgment of conviction"
8 as provided for in the Federal Rules of Criminal Procedure, Rule
9 32(b), before grounds for termination exist within the meaning of
10 the Dealer Sales and Service Agreements. In support of their
11 contention, Protestants have provided legal authority² under the
12 Petroleum Marketing Practices Act, all federal cases.

13 20. Respondents contend that the word "conviction" in the
14 Dealer Sales and Service Agreements includes a plea of guilty to
15 a felony. Respondents have also provided much legal authority
16 both refuting Protestants' cases and providing their own to show
17 that the general definition of conviction in the legal sense
18 would include a plea of guilty. This authority includes United
19 States Supreme Court decisions,³ state court decisions and a
20 statute in California where the dealer is located,⁴ in Michigan
21

22 ² Lewis v. Exxon Corp (D.C. Cir. 1983) 716 F.2d 1398;
23 Humboldt Oil Co., Inc. v. Exxon Company U.S.A. (9th Cir. 1982)
695 F.2d 386; Kohanoff v. ARCO Products Co. (1996) 77 F.3d 489.

24 ³ Kercheval v. United States (1927) 274 U.S. 220; Boykin
25 v. Alabama (1969) 395 U.S. 238; Dickerson v. New Banner
26 Institute, Inc. (1983) 460 U.S. 103; U.S. v. Broce (1989) 488
U.S. 563.

27 ⁴ Cal. Penal Code Section 689; People v. Rhodes (1990)
28 221 Cal. App. 3d 56.

1 where the Oldsmobile dealer agreement is to be interpreted,⁵ and
2 Georgia where the Saab dealer agreement is to be interpreted.⁶

3
4 ISSUES PRESENTED

5 21. Section 3066 imposes upon Saab and Oldsmobile the
6 burden of establishing the existence of good cause to terminate
7 or refuse to continue the franchises of Rancho Saab and Rancho
8 Oldsmobile.

9 22. In determining whether good cause has been established
10 for terminating or refusing to continue a franchise, section 3061
11 requires the Board to take into consideration the existing
12 circumstances, including but not limited to:

- 13 (a) Amount of business transacted by the franchisee, as
14 compared to the business available to the franchisee.
15 (b) Investment necessarily made and obligations incurred by
16 the franchisee to perform its part of the franchise.
17 (c) Permanency of the investment.
18 (d) Whether it is injurious or beneficial to the public
19 welfare for the franchise to be modified or replaced or
20 the business of the franchisee disrupted.
21 (e) Whether the franchisee has adequate motor vehicle sales
22 and service facilities, equipment, vehicle parts, and
23 qualified service personnel to reasonably provide for
24 the needs of the consumers for the motor vehicles

25
26 ⁵ People v. Serr (Mi. 1977) 250 N.W.2d 535.

27 ⁶ Huff v. Anderson (Ga. 1955) 90 S.E.2d 329

1 handled by the franchisee and has been and is rendering.
2 adequate services to the public.

3 (f) Whether the franchisee fails to fulfill the warranty
4 obligations of the franchisor to be performed by the
5 franchisee.

6 (g) Extent of franchisee's failure to comply with the terms
7 of the franchise.

8
9 APPLICABLE LAW

10 23. Dealer franchise agreements are contracts and,
11 therefore, are governed in the first instance by the rules of
12 construction applicable to contracts. Under statutory rules of
13 contract interpretation, the mutual intention of the parties at
14 the time the contract is formed governs its interpretation. Cal.
15 Civ. Code § 1636 (Deerings 1994). Such intent is to be inferred,
16 if possible, solely from the written provisions of the contract.
17 Cal. Civ. Code § 1639 (Deerings 1994). The "clear and explicit"
18 meaning of these provisions, interpreted in their "ordinary and
19 popular sense," controls judicial interpretation unless "used by
20 the parties in a technical sense, or unless a special meaning is
21 given to them by usage." Cal. Civ. Code §§ 1638, 1644 (Deerings
22 1994). If the meaning a lay person would ascribe to the language
23 of a contract is clear and unambiguous, a court will apply that
24 meaning. See, AIU Ins. Co. v. Superior Court (1990) 51 Cal. 3d
25 807, 822, 274 Cal. Rptr. 820; Reserve Insurance Co. v. Pisciotta
26 (1982) 30 Cal. 3d 800, 807, 180 Cal. Rptr. 628; Crane v. State
27 Farm Fire & Cas. Co. (1971) 5 Cal. 3d 112, 115, 95 Cal. Rptr.

1 513.

2 24. There are three basic principles of contract
3 interpretation. First, the rule is that the absence of a
4 definition "by itself" does not render a term ambiguous. Bay
5 Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co. (1993)
6 5 Cal. 4th 854, 866, 21 Cal. Rptr. 2d 691. Second, except in
7 those situations where language is "used by the parties in a
8 technical sense or [has] a special meaning [] given to [it] by
9 usage" [citation], "it is "[t]he "clear and explicit" meaning
10 of these provisions, interpreted in their "ordinary and popular
11 sense," [that] controls judicial interpretation." Id., at p.
12 867. Hence, "reliance on common understanding of language is
13 bedrock." Ibid. Finally, "[L]anguage in a contract must be
14 construed in the context of that instrument as a whole, and in
15 the circumstance of that case, and cannot be found to be
16 ambiguous in the abstract." Ibid., citing Bank of the West v.
17 Superior Court, (1992) 2 Cal. 4th 1254, 1265, 10 Cal. Rptr. 2d
18 538. A provision is ambiguous only "when it is capable of two or
19 more constructions both of which are reasonable." Id., at p.
20 867, citing Suarez v. Life Ins. Co. of North America (1988) 206
21 Cal. App. 3d 1396, 1402, 254 Cal. Rptr. 377.

22 25. The fundamental goal of contractual interpretation is
23 to give effect to the mutual intention of the parties. Cal. Civ.
24 Code § 1636 (Deerings 1994). If contractual language is clear
25 and explicit, it governs. Cal. Civ. Code § 1638 (Deerings 1994).
26 "On the other hand, '[i]f the terms of a promise are in any
27 respect ambiguous or uncertain, it must be interpreted in the

1 sense in which the promisor believed, at the time of making it,
2 that the promisee understood it.' Only if this rule does not
3 resolve the ambiguity do we then resolve it against the preparer
4 of the contract. This is because 'language in a contract must be
5 construed in the context of that instrument as a whole, and in
6 the circumstances of that case, and cannot be found to be
7 ambiguous in the abstract.' " Bank of the West v. Superior Court
8 (1992) 2 Cal. 4th 1254, 1264-1265, 10 Cal. Rptr. 2d 538.

9 26. "Since the meaning of the word is not fixed, it is
10 necessary in each particular situation to look to the context in
11 which the term is used to ascertain what is meant. ... 'Philology
12 is, at best, an unsafe criterion for ascertaining the meaning of
13 words which are in common use, and the definition thus obtained
14 is always subordinate to the meaning derived from the context, or
15 from the circumstances under which the word is used.'" Myers v.
16 Alta Construction Co. (1951) 37 Cal. 2d 739, 742; See also, In re
17 Frederick Petroleum Corp. (S.D. Ohio 1987) 75 B.R. 774, 779-780.

18 FINDINGS OF FACT⁷

19 a. Facts relating to the amount of business transacted by
20 the franchisee, as compared to the business available
to the franchisee. (§ 3061(a))

21 27. The MDA ("Multiple Dealer Area") for Oldsmobile is
22 approximately the city of San Diego.

23
24 ⁷ While neither Saab nor Oldsmobile relied upon Coast
25 Motor's inadequate sales performance as a ground for termination,
26 both manufacturers presented evidence on these issues and other
27 good cause factors because of the statutory requirements that the
Board consider all good cause factors in rendering a decision.
Findings of facts are grouped in the most logical category and
has been considered for each of the good cause factors and the
"existing circumstances."

1 28. Until recently, Oldsmobile's plans had four (4) dealers
2 in the MDA. As a result of General Motor's Plan 2000 and a
3 market study, this was reduced to two (2) dealers, Rancho
4 Oldsmobile and Trevellyan Oldsmobile ("Trevellyan"), who were
5 chosen to be the dealers in the MDA.

6 29. Oldsmobile's penetration rate has been declining in
7 recent years.

8 30. Elimination of one of two dealers will further reduce
9 Oldsmobile's penetration in the MDA and further reduce
10 competition.

11 31. Oldsmobile will be looking for a dealer who will open
12 an exclusive Oldsmobile store. There was no evidence as to when
13 there would be a new dealer.

14 32. New product for Oldsmobile's centennial-line will
15 increase penetration in a younger market.

16 33. The expected sales, based on national penetration rates
17 as adjusted for local segment popularity, will be 650 cars each
18 for Rancho Oldsmobile and Trevellyan.

19 34. Of all the dealers in San Diego County, no dealer has
20 achieved 100% of expected sales. Trevellyan is best with a
21 dealer retail sales index of 70%. Rancho Oldsmobile is last with
22 a dealer retail sales index of 25%.

23 35. Rancho Oldsmobile's inadequate sales performance has
24 become progressively worse over time:

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
25 Sales Effectiveness	52%	31%	30%	25%
26 Rank (California)	84/128	114/135	106/128	116/132

1 36. Rancho Oldsmobile has 26 new Oldsmobile cars in
2 inventory and has 3 on order. A dealer this size should have a
3 two months supply, or 60 cars, in inventory and one months supply
4 or 30 cars on order. Rancho Oldsmobile has ordered no new 1997
5 cars although vehicles are available.

6 37. Saab sold only 13,450 cars nationwide and 1,085 in
7 California during the period January to June 1995 with a 68.5%
8 increase in California for the period January to June 1996.

9 38. Saab has only seven dealers in the Southwestern United
10 States.

11 39. Saab will replace Rancho Saab if the franchise is
12 terminated.

13 40. Phillip Riggins, Saab's Market Representation Manager,
14 testified that Rancho Saab's penetration in its Area of
15 Responsibility ("AOR") is substantially below Saab's penetration
16 average in its Western Region. Saab measures its penetration
17 only in those vehicle segments in which Saab competes. In 1994,
18 Rancho Saab's penetration in its AOR was 3.07% compared to Saab's
19 Western Region penetration of 5.2%. In 1995, Rancho Saab's
20 penetration in its AOR was 2.46% compared to Saab's Western
21 Region penetration of 5.21%. In 1996 (year-to-date), Rancho
22 Saab's penetration in its AOR was 1.99% compared to Saab's
23 Western Region penetration of 4.6%.

24
25 b. Facts relating to investment necessarily made and
26 obligations incurred by the franchisee to perform its
part of the franchise. (§ 3061(b))

27 41. Rancho Saab has invested in Tracy Leddy, a Saab
28

1 specialist in car sales who has earned recognition by Saab.

2 42. Both dealerships, Rancho Oldsmobile and Rancho Saab,
3 have a line of financing with GE Capital sufficient for operations
4 of Saab and Oldsmobile.

5
6 c. Facts relating to permanency of the investment.
7 (§ 3061(c))

8 43. Under a buy-sell agreement, Williams has been offered
9 \$300,000 for his goodwill: \$50,000 as goodwill and \$250,000 as
10 consideration for a covenant not to compete.

11 44. As of May 31, 1996, Rancho Oldsmobile and Rancho Saab
12 (collectively "Coast Motors") had a net worth of \$469,479. As of
13 June 4, 1996, the value of the equipment was appraised at
14 \$371,930.

15 45. Coast Motors leases its dealership site and facilities
16 from a third party pursuant to a lease that will expire in the
17 year 2000. The monthly rent is approximately \$17,000 per month.
18 If the dealership terminates operations, Williams will be liable
19 for rent for the remainder of the lease term, or until the year
20 2000. The lease is under market rate in that Coast Motors can
21 sublease for a modest profit.

22
23 d. Facts relating to whether it is injurious or beneficial
24 to the public welfare for the franchise to be modified
25 or replaced or the business of the franchisee
disrupted. (§ 3061(d))⁸

26 ⁸ The criminal activities of the dealer principal will be
27 discussed in detail in the breach of franchise agreement good
28 cause factor, although also appropriate here.

1 46. The California Supreme Court removed Judge Adams⁹ from
2 office, because he "engaged in successive extrajudicial
3 transactions that extended over a significant period of time,
4 creating an appearance of serious impropriety and thereby tending
5 to diminish the public esteem of the judiciary." Many of these
6 transactions were channelled through Williams' Saab/Oldsmobile
7 franchise. Adams v. Commission of Judicial Performance (1995) 10
8 Cal. 4th 866, 914, 42 Cal. Rptr. 2d 606.

9 47. The nearest Saab dealership is in Oceanside, several
10 miles north and in the northern part of San Diego county, which
11 would cause a major inconvenience to Saab owners from as far away
12 as Yuma Arizona should Rancho Saab be terminated.

13 48. Rancho Saab's Customer Satisfaction Index ("CSI")
14 scores are extremely low. Rancho Saab's overall CSI scores since
15 the third quarter of 1994 caused the dealership to rank near the
16 bottom of all dealers nationwide:

	<u>1994</u>	<u>1995</u>	<u>YTD 1996 (6/30/96)</u>
17 1st Quarter		285/274	235/266
18 2nd Quarter		231/274	
19 3rd Quarter	227/281	266/274	
20 4th Quarter	278/281	269/274	

21 49. For the second quarter of 1996, Rancho Saab ranked 259
22 out of 266 nationwide in CSI for service. Similarly, Rancho Saab
23 ranked 193 out of 266 nationwide in CSI for sales and delivery.
24

25
26 ⁹ In a complex civil case, Judge Adams rendered a
27 decision awarding Williams approximately \$5 million and expressly
28 retained jurisdiction to determine attorney fees and costs on
appeal.

1 50. If Coast Motors is terminated, the consuming public in
2 the San Diego MDA will have only one Oldsmobile dealer,
3 Trevellyan located in Mission Valley, to sell and service
4 Oldsmobile vehicles to a growing population that reached
5 1,929,911 in 1995 and which was served by four (4) dealers two
6 (2) years ago. Likewise, there will be only one Saab dealer
7 located in the extreme northern edge of the county in Oceanside,
8 California.

9 51. Rancho Oldsmobile has poor CSI with Oldsmobile. The
10 most recent CSI survey data (through June 6, 1996) shows that
11 Rancho Oldsmobile's overall CSI scores cause it to rank last out
12 of the nine Oldsmobile dealers in the district, which includes
13 the other San Diego Oldsmobile dealers as well as Oldsmobile
14 dealers in Southern Orange County. Rancho Oldsmobile's CSI score
15 is also below the average CSI for all 200 Oldsmobile dealers in
16 the Los Angeles Area (including Southern California, Nevada, New
17 Mexico and Arizona), as well as below the average for all
18 Oldsmobile dealers in the nation. In 1995, Rancho Oldsmobile
19 ranked 2413 out of all 2930 Oldsmobile dealers nationwide.

20 e. Facts relating to whether the franchisee has adequate
21 motor vehicle sales and service facilities, equipment,
22 vehicle parts, and qualified service personnel to
23 reasonably provide for the needs of the consumers for
the motor vehicles handled by the franchisee and has
been and is rendering adequate services to the public.
(§ 3061(e))

24 52. The facility is a modern, well-equipped facility
25 adequate for service and sales.

26 53. The franchisee has adequate equipment, vehicle parts
27 and qualified service personnel to provide for the needs of
28

1 Oldsmobile and Saab customers.

2 54. If the dealership is closed, Saab service customers
3 could be taken care of through a contract service provider,
4 "EDS", an approved independent repair shop for warranty work.

5 f. Facts relating to whether the franchisee fails to
6 fulfill the warranty obligations of the franchisor to
be performed by the franchisee. (§ 3061(f))

7 55. Oldsmobile and Saab failed to put on evidence as to
8 lack of warranty obligations. This issue is not in dispute. The
9 franchise fulfills warranty obligations. The franchise has had
10 only one \$6,000 warranty chargeback in its history.

11
12 g. Facts relating to the extent of franchisee's failure to
13 comply with the terms of the franchise. (§ 3061(g))

14 56. Williams was involved in the San Diego County bribery
15 scandal in which one Superior Court judge has pled guilty to
16 bribery, two others are scheduled to go to trial on September 3,
17 1996, and an attorney, Patrick Frega ("Frega"), is also scheduled
18 to go to trial on September 3, 1996.

19 57. Williams pled guilty to obstruction of justice in
20 federal court on March 11, 1996, based on the underlying facts:

21 a. In or about 1984, Williams hired Patrick Frega as
22 his attorney in connection with the case of
23 Security Pacific National Bank v. James J.
24 Williams, et al. (hereinafter referred to as
25 "Security Pacific.")

26 b. Security Pacific Bank was suing Williams for
27 approximately \$90,000 on personal guarantees.

- 1 c. Prior to the commencement of trial, Frega, on
2 behalf of Williams, filed various counter-claims
3 against Security Pacific seeking monetary damages.
- 4 d. In or about the summer of 1985, Security Pacific
5 was assigned to Judge Adams for trial in San Diego
6 Superior Court.
- 7 e. Before the Security Pacific trial, Frega arranged
8 for Williams to rehearse his testimony in the
9 presence of Michael Greer, then a sitting Superior
10 Court Judge in San Diego County.
- 11 f. After a bench trial to the court sitting without a
12 jury, Judge Adams ruled in favor of Williams and
13 entered a judgment in his favor of approximately
14 \$5 million. Judge Adams also awarded Williams
15 costs and attorney's fees.
- 16 g. Judge Adams retained jurisdiction of the case
17 while it was on appeal in order to assess costs
18 and award attorney's fees following the appeal.
- 19 h. Following the trial, Frega instructed Williams "to
20 take care of" Judges Greer, Adams and Malkus, also
21 a sitting San Diego County Superior court judge,
22 and he, Frega, would pay for anything given them
23 from Williams' automobile dealerships.
- 24 i. From in or about August 1985 through in or about
25 February 1992, Frega made over \$65,000 in payments
26 on behalf of three sitting Superior Court Judges
27 (including Adams) utilizing car purchases and
28

1 repairs billed through Williams' automobile
2 dealerships.

3 j. These dealerships include Williams' Saab
4 dealership, Williams' Oldsmobile dealership, and
5 Williams' Jeep Eagle dealership.

6 k. Following the Security Pacific case, Williams
7 authorized his dealerships to absorb certain costs
8 associated with the purchases and repair of cars
9 made by and on behalf of Judge Adams in an amount
10 exceeding \$3,000.

11 l. In or about 1991, the California State Commission
12 on Judicial Performance ("Judicial Commission")
13 commenced an investigation involving the three
14 Superior Court Judges on whose behalf Frega had
15 been making payments to Williams' automobile
16 dealerships.

17 m. During the course of the Judicial Commission's
18 investigation, Williams was interviewed, testified
19 under oath and produced documents to the Judicial
20 Commission.

21 n. In response to subpoenas for the production of
22 dealership records, Williams (following Frega's
23 review and approval) failed to produce all
24 documents responsive to the subpoenas.

25 o. Many of the documents submitted by Williams to the
26 Judicial Commission (following Frega's review and
27 approval) contained false and misleading
28

1 information regarding transactions involving Frega
2 and the three Superior Court Judges.

3 p. In connection with his interview and testimony
4 during the Judicial Commission's investigation,
5 Williams, at Frega's direction, mislead and
6 deceived the Judicial Commission concerning
7 material facts relating to Frega and the
8 transactions involving the three Superior Court
9 Judges.

10 q. Beginning on or about April 18, 1995, Williams'
11 automobile dealerships were subpoenaed to produce
12 documents to a Federal Grand Jury.

13 r. The documents subpoenaed involved, among other
14 things, transactions of Frega and the three
15 Superior Court Judges for whom Frega was paying
16 expenses.

17 s. In response to the Federal Grand Jury subpoenas,
18 Williams, with Frega's knowledge and approval,
19 initially failed to produce all the documents that
20 were responsive to the subpoena.

21 t. In addition, Williams knew that many of the
22 documents he produced to the Grand Jury in
23 response to the Grand Jury subpoenas contained
24 false and misleading entries with respect to the
25 transactions involving Frega and the three
26 Superior Court Judges.

27 u. Williams knew that the Federal grand Jury was
28

1 investigating violations of Federal Criminal Law
2 and was acting within the jurisdiction of a
3 department or agency of the United States.

4 58. Williams conduct was intentional.

5 59. Williams understood that the *plea of guilty* he entered
6 on March 11, 1996, to the charge of obstruction of justice could
7 cause him to lose his dealerships (Emphasis added). He was
8 questioned by Federal Court Judge Edward Rafeedie as to this very
9 issue and responded as follows:

10 The Court [Judge Rafeedie]: Well, among the other
11 consequences, other than those that I have discussed with
12 you regarding sentencing, your plea agreement contains in
13 paragraph 14, on page 14, some other collateral consequences
14 that may result from this plea.

15 For example, it is stated here that as a result of this
16 plea of guilty to a felony, you may suffer the loss of your
17 automobile dealerships?

18 The Defendant [Williams]: That is correct, your honor.

19 The Court: Is that something you have taken into
20 account before pleading guilty?

21 The Defendant: Yes.

22 60. Section XIV of the Plea Agreement provides as follows:

23 "It is understood between the parties that as a result of
24 the defendant's plea of guilty to a felony, the defendant
25 may suffer certain collateral consequences involving the
26 loss of his automobile dealerships. The consequences will
27 flow as a result of certain dealership franchise agreements
28 and California licensing provisions."

29 61. The plea agreement contains a provision that the

1 writing was "the entire agreement" between Williams and the
2 United States government.

3 62. The United States Attorney prosecuting Williams and
4 Williams' attorney, Thomas J. Warwick, intended that there be a
5 delay on the impact of the guilty plea on Williams' businesses to
6 enable him to continue dealership operations so that he could
7 maintain the employment of his employees and the generation of
8 profits which produced payments to charitable trusts until such
9 time as he could arrange for the orderly sale of the business,
10 notwithstanding the clear provisions of the plea agreement and
11 the questioning by the federal judge to the contrary.

12 63. The Oldsmobile Dealer Agreement provides as follows in
13 Article 14.5:

14 14.5 If Division learns that any of the following has
15 occurred, it may terminate this Agreement by giving Dealer
16 written notice of termination. Termination will be
effective on the date specified in the notice.

17 14.5.1 Conviction in a court of original jurisdiction of
18 Dealer, or a predecessor of Dealer owned or controlled by
the same person, or any Dealer Operator or dealer owner of
any felony.

19 64. Federal law and the Plea Agreement provide a range of
20 actions as to the guilty plea, depending in part upon the United
21 States' recommendations after the conclusion of the Malkus-Adams-
22 Frega criminal trial, which include accepting a withdrawal of the
23 existing plea and a change to a misdemeanor, or allowing the plea
24 to stand and accepting a deferred prosecution, which would result
25 in a dismissal. However, Malkus, Adams and Frega were found
26 guilty after their trial and there was no evidence presented that
27 the United States was recommending any of these options.

1 65. The Saab Dealer Agreement provides as follows in

2 Article 23:

3 B. Termination by Saab. Upon the occurrence of any
4 of the following events, Saab may terminate this Agreement
5 by giving Dealer notice thereof, such termination to be
6 effective upon the date specified in such notice, or such
7 later date as may be required by any applicable statute:

- 8
- 9 (8) Conviction of Dealer or any principal
10 officer, principal stockholder or manager of
11 Dealer or any partner in Dealer of any crime
12 which, in the reasonable opinion of Saab, may
13 adversely affect the goodwill or interest of
14 Dealer or Saab.

15 66. The American Heritage Dictionary defines conviction as
16 follows: "1.a. The act or process of finding or proving guilty.
17 b. The state of being found or proved guilty. 2.a. . . . 3. . . ."
18 The American Heritage Dictionary, (2d ed. 1985) at page 320.

19 67. Webster's definition of conviction is as follows: "1.
20 Act of convicting; act of proving finding, or adjudicating,
21 guilty of an offense. 2 . . . 3 . . . 4. Law. Act of convicting
22 a person or state of being convicted, of a criminal offense; the
23 proceeding of record by which a person is legally found guilty of
24 any crime, esp. by a jury, and on which the judgment is based."
25 Webster's New International Dictionary (2d ed. unabridged 1953)
26 at page 584.

27 68. Funk and Wagnalls defines conviction and convict as
28 follows: "Conviction. 1. the act of convicting . . ."
"Convict: 1. To prove guilty; find guilty after a judicial
trial." Funk & Wagnalls, Standard Comprehensive International
Dictionary (1973) at page 285.

1 of guilty of James J. Williams, the dealer principal of Rancho
2 Saab and Rancho Oldsmobile, certainly meets the standards
3 outlined in the Dealer Agreements and the definition of
4 "conviction" in common usage as defined by the American Heritage
5 Dictionary, Webster's Dictionary and Funk & Wagnalls' Dictionary.
6 In addition the overwhelming weight of legal authority is that
7 conviction includes a plea of guilty.

8 74. Rancho Saab and Rancho Oldsmobile have breached the
9 Dealer Agreements by Williams' plea of guilty to a felony in
10 federal court, being a conviction as understood in the language
11 of the agreement of the parties.

12 75. Protestants understood the terms of the plea agreement
13 to mean that Williams' plea of guilty could cause the termination
14 of his franchise agreements.

15 76. Coast Motors is providing adequate service and sales
16 facilities and personnel.

17 77. Coast Motors has adequate capital invested to service
18 the franchises.

19 78. Coast Motors and James Williams could lose substantial
20 permanent investment in the form of \$250,000 in goodwill by the
21 termination of the dealership.

22 79. The consuming public will be inconvenienced by the
23 closure of Coast Motors' Saab and Oldsmobile franchises.

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PROPOSED DECISION

1. The protests are overruled. Saab and Oldsmobile shall be allowed to terminate the franchise of Coast Motors, Inc. dba Rancho Oldsmobile/Saab/Lotus.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter, as a result of a hearing before me on the above dates and recommend the adoption of this proposed decision as the decision of the New Motor Vehicle Board.

DATED: December 10, 1996

By 
DOUGLAS H. DRAKE
Administrative Law Judge