

1401 - 21st Street
Suite 407
P. O. Box 31
Sacramento, CA 95801
(916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD.

In the Matter of the Protests of)
MURPHY LINCOLN MERCURY and) Protest Nos. PR-156-77
BOB ESTES, A LINCOLN MERCURY) PR-161-77
DEALERSHIP,)
Protestants,)
vs.)
LINCOLN MERCURY, A DIVISION OF) Filed: April 18, 1978
FORD MOTOR COMPANY,)
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 this 18th day of April, 1978.



JOHN B. OAKLEY
Vice President
New Motor Vehicle Board

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MURPHY LINCOLN MERCURY and)
BOB ESTES LINCOLN MERCURY,) Protest Nos. PR-156-77
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) LINCOLN MERCURY, A DIVISION OF)
) FORD MOTOR COMPANY,)
)
) Franchisor.)
)

PROPOSED DECISION

Procedural Background

1. Respondent, Lincoln Mercury, a Division of Ford Motor Company ("Ford"), gave notice on December 14, 1977, pursuant to Section 3062 of the Vehicle Code^{1/} of its intention to relocate an existing motor vehicle dealership, Peyton Lincoln Mercury ("Peyton"), presently located at 25975 South Normandie Avenue, to a new location at 901 East Carson Street, Carson California. Protests to the relocation were filed by Murphy Lincoln Mercury ("Murphy") located at 1940 Lakewood Boulevard,

^{1/}All references are to the Vehicle Code.

Long Beach, California on December 23, 1977, and by Bob Estes Lincoln Mercury ("Estes") located at 964 South LaBrea Avenue, Inglewood, California on December 27, 1977.

2. The hearing was held pursuant to Section 3066 before Thomas Kallay, Hearing Officer of the New Motor Vehicle Board in Los Angeles, California, commencing on March 6, 1978.

3. The protestants were represented by Sidney I. Pilot, and the respondent was represented by Ronald L. Olson of Munger, Tolles & Rickershauser, and by Stewart M. Weiner, Staff Attorney of Ford Motor Company.

Issues Presented

Protestants contend:

1. Estes' and Murphy's investments are permanent; the proposed relocation of Peyton (hereinafter sometimes referred to as the "relocation") will have an adverse impact on Estes' and Murphy's investments (Section 3063(1)); and Peyton has no investment in the site to which it may be relocated.^{2/}

(a) Estes contends that a crescent-shaped area and a corridor along the San Diego Freeway, both marked in brown on Protestant's Exhibit 48, constitutes 27% and 6%, respectively, of its new and used car sales in 1976-1977.

^{2/}It is conceded that Peyton has a permanent investment at its present site. (RT 1496)

Estes further contends that 15% of its total sales for this period (or one-half of the 33% of its sales into the areas colored brown on Protestant's 48) will be lost due to the relocation.

(b) Murphy contends that it would lose approximately 25% of its sales and service business as a result of the relocation.

2. The consuming public in the Palos Verdes area will be inconvenienced by the relocation. (§3066(2))

3. The consuming public in the Inglewood area will suffer since the relocation will eliminate the Estes dealership. (§3066(2))

4. The consuming public in Murphy's market area will suffer because the relocation would compel Murphy to curtail its service to the public. (§3063(2))

5. The relocation will have the effect of redistributing the existing market for Lincoln Mercury products and will have no positive effect on the retail motor vehicle business. (§3063(2))

6. The relocation is tantamount to the establishment of an additional franchise and would injure the public for the reasons set forth in paragraphs 2, 3, and 4. (§3063(3))

7. Estes and Murphy are providing adequate competition and convenient consumer care in the terms of Section 3063(4).

8. The relocation would not increase competition.
(§3063(5))

Findings of Fact

Facts Relating to Permanency of Investment (§3063(1))

9. Estes' and Murphy's investments are permanent.
10. An escrow has been opened for the purchase of a portion of Lots 3 and 4 of Tract 4054, as per map recorded in Book 44, pages 39 to 41, inclusive, of the Maps in the Office of the County Recorder of Los Angeles (hereinafter the "proposed site"). The proposed site is in the City of Carson and abuts the San Diego Freeway and Carson Street.
11. Peyton has paid \$2,000 upon the opening of the escrow; the sales price for the proposed site reflected on the escrow instruction is \$702,000.^{3/}

Facts Relating to the Effect on the Consuming Public (§3063(2))

12. Peyton is presently located at 25975 South Normandie Avenue, Harbor City, California ("present site").
13. Distances between the proposed and present sites are:

^{3/}The escrow instructions were received in evidence after the conclusion of the hearing, and pursuant to stipulation of counsel.

(a) All-freeway route: approximately six miles on the Harbor and San Diego Freeways and slightly less than one mile on the Pacific Coast Highway (seven miles);

(b) Partial-freeway route: slightly less than one mile on the Pacific Coast Highway, approximately two and one-quarter miles on the Harbor Freeway and a mile and a half on Carson Street (approximately four and three-quarter miles);

(c) Air-miles: slightly less than four miles.

14. The routes and arteries described in paragraph 13 are accessible to residents of Palos Verdes.

15. The proposed site is next to the San Diego Freeway and is in the vicinity of a sheriff's substation.

16. Carson has an unfavorable reputation for its crime rate.

17. Peyton will be able to service old customers as well as customers from the present Open Point Area (paragraph 21(a)) at the proposed site.

Facts Relating to the Effect on the
Retail Motor Vehicle Business (§3063(2))

18. Effect on Estes:

(a) Net profit after taxes is reflected in Respondent's 0-1 through 0-4 for the years 1974, 1975, 1976 and 1977, as losses of \$79,908 and \$101,739 and gains of \$1,672 and \$9,149 (corrected to \$6,865), respectively.

(b) The proposed site is located approximately nine air miles from Estes' dealership.

(c) The Polk cross-sell data (Respondent's I 1-13) for Estes show sales activity of substantially the same volume and distribution as does the evidence produced by Estes.^{4/}

(d) The relocation would have some impact on Estes' sales.

(e) Estes did not sustain its burden of proof relative to its contention that it would lose approximately 15% of its total sales as a result of the relocation:

(1) The witnesses who testified in support of this contention were not shown to have the requisite qualifications to make such a forecast; and

(2) The witnesses who testified in support of this contention based their opinion on speculation and conjecture.

(f) Estes could respond to its present difficulties by a more aggressive leasing program and advertising.

19. Effect on Murphy:

(a) Net profits after taxes is reflected in Protestant's 19 and Respondent's N, M, and L for the years 1977, 1976, 1975 and 1974 to be \$375,119.00; \$366,434.00; \$218,120.00; and \$445,612.00.

^{4/} Respondent's objections to Protestant's Exhibit 38 are overruled.

(b) The proposed site is located approximately seven air miles from Murphy's dealership.

(c) The relocation would have some impact on Murphy's sales.

(d) Murphy did not sustain its burden of proof relative to its contention that it would lose approximately 25% of its total sales as a result of the relocation:

(1) The witnesses who testified in support of this contention were not shown to have the requisite qualifications to make such a forecast; and

(2) The witnesses who testified in support of this contention based their opinion on speculation and conjecture.

20. The location of a dealership near or at a freeway can be reasonably expected to increase consumer interest in the particular line-make and therefore, to increase sales of that line-make.

21. Sales of Lincoln-Mercury and Ford corporate planning for the South Los Angeles primary market area:

(a) Ford intends to close the Open Point Area reflected on Respondent's Exhibit G and to redistribute the planned sales for that closed point as indicated on Respondent's Exhibit K. The closing of the open point is to occur in tandem with the relocation.

(b) Lincoln Mercury sales in the South Los Angeles multiple point area have declined from 6,875 in 1973 to 4,658 in 1977 (Hearing Officer's Exhibit III).

(c) Ford intends, by the relocation, to spur Lincoln Mercury sales in the South Los Angeles multiple point area.

(d) There is no evidence that either Estes or Murphy were or are being treated unfairly or discriminatorily by the Lincoln Mercury Division of Ford.

Facts Relating to Injury to the Public Welfare (§3063(3))

22. The relocation is not the establishment of an "additional franchise" in the terms of Section 3063(3).

Facts Relating to Adequate Competition and Consumer Care (§3063(4))

23. Estes and Murphy are providing adequate competition and convenient consumer care in the terms of Section 3063(4).

Facts Relating to Increasing Competition (§3063(5))

24. The relocation is not the establishment of an "additional franchise" in the terms of Section 3063(5).

Determination of Issues

1. Estes' and Murphy's investments are permanent.
2. Peyton's investment at its present site is permanent.
3. Estes and Murphy failed to sustain their burden of

proof in support of contentions 1a and 1b.

4. The extent of the impact of the relocation in Estes' and Murphy's sales has not been established by the evidence.

5. A decrease in the protestant's sales is not in and of itself good cause for not relocating Peyton.

6. Estes could increase its profits by improving its present business practices.

7. There is a reasonable probability that the relocation would improve Lincoln Mercury sales in the South Los Angeles Multiple Point Area. Accordingly, the relocation would have a beneficial effect on the retail motor vehicle business.

8. The consuming public would continue to be well served if the relocation is approved.

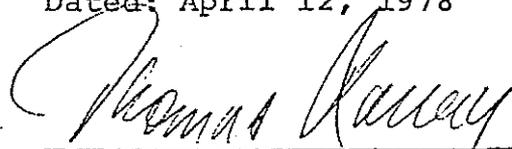
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THE FOLLOWING PROPOSED DECISION is respectfully submitted:

The protests are overruled. The respondent is entitled to relocate Peyton to the proposed location.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of a hearing had before me on the above date at Los Angeles, California and recommend its adoption as the Decision of the New Motor Vehicle Board.

Dated: April 12, 1978



Thomas Kallay
Hearing Officer
New Motor Vehicle Board