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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
)
GEORGE ARRUES, dba KON TIKI MOTORCYCLES,) Protest No. PR-162-78
)
) Protestant,)
)
vs.)
)
KAWASAKI MOTORS CORPORATION, U.S.A.,) Filed: April 18, 1978
)
) 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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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
GEORGE ARRUES, dba KON TIKI CYCLE,) Protest No. PR-162-78
Protestant,)
vs.)
KAWASAKI MOTOR CORPORATION, U.S.A.,)
Respondent.)

PROPOSED DECISION

Procedural Background

1. Protestant, George Arrues, dba Kon Tiki Motorcycles ("Kon Tiki") a franchised Kawasaki dealer, located at 1335 Garnet Avenue, Pacific Beach, California, filed a protest with the New Motor Vehicle Board ("Board") on January 11, 1978.
2. Kon Tiki alleged in part that a Mutual Termination Agreement signed by Kon Tiki and Kawasaki terminating the franchise as of March 31, 1978 was superceded by a subsequently issued franchise with a termination date of September 30, 1978.
3. A hearing was held before Anthony M. Skrocki, Hearing

Officer of the Board in San Diego on April 3, 1978. Protestant was represented by A. Albert Spar, Esq., of the law offices of Sidney I. Pilot. Respondent was represented by Robert G. Lane, Esq. of the law offices of Paul, Hastings, Janofsky & Walker.

Issues Presented

4. Although protestant raised additional issues in its protest, as well as at the hearing, the Hearing Officer determined that the primary issue to be resolved was whether the parties intended the franchise agreement executed by protestant on November 18, 1977, and by respondent on November 23, 1977, to control the termination date of the franchise, subject to the provisions of Vehicle Code Section 3060.

Findings of Fact

5. A Mutual Termination Agreement was signed by Kon Tiki and Kawasaki in September, 1977. (Ex. 1) This agreement provided for termination of the Kawasaki franchise of Kon Tiki effective March 31, 1978.

6. A "Kawasaki 1978 Model Year Authorized Dealer Sales and Service Agreement" ("1978 Franchise") was executed by Kon Tiki on November 18, 1977, and by Kawasaki on November 23, 1977. (Prot. Ex. A)

7. Paragraph 2 of the 1978 Franchise provided in its pertinent part:

"2. Duration of Agreement

"This Agreement shall be in effect from the date hereof to and including September 30, 1978..."

(Pro. Ex. A)

8. Paragraph 31 of the 1978 Franchise provides in its pertinent part:

"31. General Provisions

...This Agreement is the entire agreement between the parties and terminates and supercedes all prior agreements, verbal or written, between the parties."

9. Kawasaki has not complied with the provisions of Vehicle Code Section 3060 in that no written notice of termination of the 1978 Franchise was sent to either Kon Tiki or the Board.

Determination of Issues

1. The Mutual Termination Agreement was superceded by the 1978 Franchise which represents the total and final agreement of the parties in regard to the effective termination date of the franchise.

2. Respondent has not complied with the provisions of Section 3060.

* * * * *

The following proposed decision is respectfully submitted:

The Respondent is not permitted to terminate Protestant's franchise without compliance with the provisions of Vehicle Code Section 3060.

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 San Diego, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: 4/11/78

Anthony M. Skrocki

ANTHONY M. SKROCKI
Hearing Officer
New Motor Vehicle Board

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
JOE BABER,) Protest No. PR-171-78
Protestant,)
vs.)
YAMAHA MOTOR CORPORATION, U.S.A.,) Filed: September 14, 1978
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.

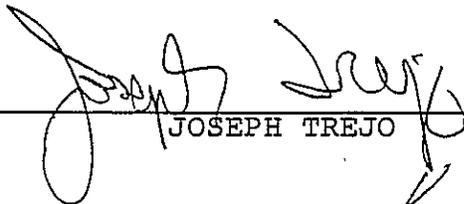
IT IS SO ORDERED this 31st day of August, 1978.



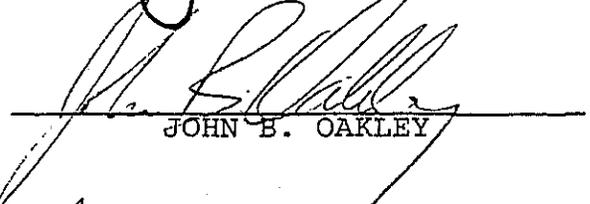
FLORENCE POST



LYMAN R. SMITH



JOSEPH TREJO



JOHN B. OAKLEY



KATHLEEN O. TURNER

Public Members
New Motor Vehicle Board