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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of
AMERAN ENTERPRISES, LTD., a California
Corporation, dba LAIL BROS., and
LAIL BROS. WESTERN AVE., INC., a
California Corporation (enfranchised
as AMERAN ENTERPRISES LTD., a
California Corporation, dba LAIL BROS.
WESTERN AVE. INC.),

Protestants,

vs.

PEUGEOT MOTORS OF AMERICA, INC.,
A Corporation,

Respondent.

Protest Nos. PR-174-78

PR-175-78

Filed: September 14, 1978

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.

abstained
FLORENCE POST

JOSEPH TREJO

KATHLEEN O. TURNER

LYMAN R. SMITH

JOHN B. OAKLEY

Public Members
New Motor Vehicle Board

LaCienega's and Western's Peugeot franchises. LaCienega^{2/} and Western, hereinafter sometimes collectively referred to as "protestants", filed protests under section 3060 on March 10, 1978.

2. In accordance with section 3060(a)(1), the notices of termination:

(a) were to take effect by their terms sixty (60) days after receipt of the letter of February 9, 1978, notifying protestants of the termination of their franchises (see ¶1); and

(b) set forth as the grounds for termination the protestants' inability to cure their line of credit deficiency.

3. The hearing was held pursuant to section 3066 before Thomas Kallay, Hearing Officer of the New Motor Vehicle Board, in Los Angeles, California, on May 18, 19, and 22, 1978.

4. The protestants were represented by Charles H. Mann, Esq.; Peugeot appeared by Francis J. McLaughlin, Esq., of Lillick, McHose & Charles.

Issues Presented

5. Peugeot contends that it has good cause to terminate the protestants' franchises in that:

(a) The protestants did not transact sufficient business compared to the business available to them (§3061(1));

(b) It would not be injurious to the public welfare for the franchises to be replaced (§3061(4));

2. Ameran Enterprises Ltd., a California corporation, doing business as Lail Brothers on LaCienega Boulevard, filed the protest for LaCienega. All references to LaCienega apply to Ameran Enterprises Ltd.

(c) The protestants have not provided adequate service for the consumers (§3061(5)); and

(d) The protestants have failed to comply with the terms of the franchise in that they have not maintained a line of wholesale credit in violation of Article IV, section 13, of the Peugeot Dealer Agreement (Exh. 4 & 5).

Findings of Fact

Findings Relating to Business Transacted
(§3061(1))

6. LaCienega's sales and inventory in 1977/78:

| | <u>MONTH</u> | <u>SALES</u> | <u>INVENTORY</u> |
|------|--------------|--------------|------------------|
| 1977 | January | 4 | 12 |
| | February | 5 | 11 |
| | March | 9 | 22 |
| | April | 5 | 15 |
| | May | 7 | 16 |
| | June | 5 | 14 |
| | July | 4 | 15 |
| | August | 3 | 15 |
| | September | 2 | 14 |
| | October | 3 | 12 |
| | November | 1 | 10 |
| | December | 8 | 14 |
| 1978 | January | 0 | 6 |
| | February | 0 | 6 |
| | March | 0 | 6 |
| | April | 1 | 5 |
| | May | 2 | 4 |

7. Western's sales and inventory in 1977/78:

| | <u>MONTH</u> | <u>SALES</u> | <u>INVENTORY</u> |
|------|--------------|--------------|------------------|
| 1977 | January | 4 | 14 |
| | February | 4 | 19 |
| | March | 7 | 15 |
| | April | 9 | 15 |
| | May | 6 | 15 |
| | June | 7 | 13 |
| | July | 2 | 14 |
| | August | 2 | 10 |
| | September | 2 | 10 |
| | October | 3 | 9 |
| | November | 3 | 10 |
| | December | 3 | 7 |

| | <u>MONTH</u> | <u>SALES</u> | <u>INVENTORY</u> |
|------|--------------|--------------|------------------|
| 1978 | January | 1 | 4 |
| | February | 1 | 4 |
| | March | 1 | 3 |
| | April | 3 | 5 |
| | May | 1 | 3 |

8. LaCienega's and Western's sales in 1974-76 are set forth in Exhibits "G" and "H" and incorporated by reference as though fully set forth herein.

9. Protestants' sales until August 1977 were adequate.

10. Exhibit "K" reflects that 36.05% more Peugeots were sold in January 1978 than in January 1977.

11. Peugeot sold 156 vehicles to its dealers in District 1 in 1978 up to the date of the hearing.^{3/}

12. Notwithstanding Peugeot's notice of termination, both protestants were offered vehicles by Peugeot up to the time of the hearing.

13. Protestants' decrease in sales beginning August 1977 are attributable to the loss of their lines of credit.

Findings Relating to
the Replacement of the Franchises
(§3061(4))

14. Peugeot intends to replace both franchises as fast as possible.

Findings Relating to Adequacy of Service^{4/}
(§3061(5))

15. In 1976, Peugeot received 7 consumer complaints concerning protestants and 6 consumer complaints concerning all

3. District 1 encompasses 13 dealers, including protestants.

4. Peugeot produced evidence on this issue only after protestants had put this question into contention during their case in chief.

other dealers in the sales district. (See fn. 3.) In 1977, 12 and 15 such complaints were received concerning protestants and all other dealers, respectively.

16. The inventory control system of protestants' parts departments is inadequate. This has the natural effect of resulting in poor customer service.

Findings Relating to Protestants'
Failure to Comply with the Terms of the Franchise
(§3061(7))

17. Protestants' DEALER AGREEMENTS (hereinafter "franchise agreements") provide in relevant part:

"Dealer agrees to maintain, during the existence of this agreement, a line of wholesale credit with a responsible financing institution in form and substance reasonably satisfactory to Distributor at a level permitting Dealer to inventory Peugeot Products commensurate with its responsibilities under this Agreement and as may be more particularly reflected in the Dealer Development Plan from time to time in effect."

18. Protestants' lines of credit were cancelled by the Bank of America on August 5, 1977.

19. Article IV, Section 11, Part B of the franchise agreements requires the submission by protestants of financial statements on a monthly basis.

20. Protestants have not submitted a financial statement to Peugeot for the last six months.

21. Article IV, Section 11 of the franchise agreements requires protestants to keep on hand a satisfactory inventory of parts.

22. On or about May 17, 1978, protestants were offered a line of credit of \$250,000 by First California Bank Corporation.

Protestants offered this line of credit to Peugeot but Peugeot declined it as unsatisfactory.

23. Protestants and Peugeot agreed at the hearing that an inquiry into the reasonableness of Peugeot's refusal to accept the line of credit offered by protestants pursuant to the franchise agreement was irrelevant for purposes of a hearing held pursuant to Section 3061.

24. Protestants did not secure a line of credit at any time between August 5, 1977, and the line of credit offered to Peugeot on or about May 17, 1978 (Paragraph 18.)

Determination of Issues

1. The protestants did not transact sufficient business compared to that available to them in 1978.

2. The protestants' decrease in sales commencing on or about August, 1977 are attributable to the loss of their lines of credit.

3. Protestants have not complied with their franchise agreements in that:

(a) They have failed to maintain line of credit;

(b) They have not submitted financial statements on a monthly basis nor maintained an adequate inventory of parts.

4. Protestants' customer service has not been reasonably adequate.

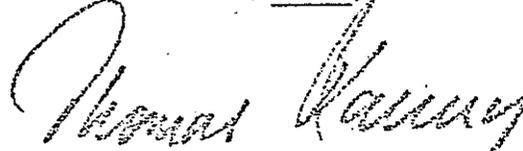
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The following proposed decision is respectfully submitted:

There is good cause for the termination of protestants' franchises.

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: June ^{14th} 1978.



THOMAS KALLAY
Hearing Officer
New Motor Vehicle Board