

NEW MOTOR VEHICLE BOARD  
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

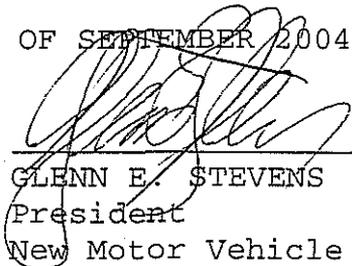
In the Matter of the Protest of )  
)  
RAY FLADEBOE LINCOLN-MERCURY, ) **Protest No. PR-1881-03**  
INC., )  
)  
Protestant, )  
)  
v. )  
)  
AMERICAN ISUZU MOTORS, INC., )  
)  
Respondent. )  
\_\_\_\_\_ )

DECISION

At its regularly scheduled meeting of September 30, 2004, the Public and Dealer members of the Board met and considered the administrative record and Proposed Decision in the above-entitled matter. After such consideration, the Board adopted the Proposed Decision as its final Decision in this matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 30<sup>th</sup> DAY OF SEPTEMBER 2004.

  
\_\_\_\_\_  
GLENN E. STEVENS  
President  
New Motor Vehicle Board

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8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD  
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11 In the Matter of the Protest of )  
12 RAY FLADEBOE LINCOLN MERCURY, ) **Protest No. PR-1881-03**  
13 INC., FLADEBOE AUTOMOTIVE GROUP, )  
INC., )  
14 Protestant, ) **PROPOSED DECISION**  
15 v. )  
16 AMERICAN ISUZU MOTORS, INC., )  
17 Respondent. )  
18

19 PROCEDURAL BACKGROUND

20 1. Protestants, Ray Fladeboe Lincoln Mercury, Inc. and Fladeboe  
21 Automotive Group, Inc. (hereinafter, *RFLM* and *Fladeboe A.G.*) filed  
22 this protest<sup>1</sup> on October 21, 2003, alleging wrongful failure to pay  
23 warranty repair reimbursements in violation of Vehicle Code section  
24 3065.<sup>2</sup>  
25  
26

27 <sup>1</sup> Related Protest No. PR-1880-03 concerning franchisor incentive reimbursement was  
filed and heard simultaneously with this protest. The two protests are not  
consolidated for decision.

28 <sup>2</sup> Except where stated, statutory citations herein are to the California Vehicle Code.

1           2.     Respondent, American Isuzu Motors, Inc. (hereinafter, *Isuzu*)  
2 filed a motion to dismiss the protest on November 19, 2003.  
3 Respondent argued therein that neither RFLM nor Fladeboe A.G. had  
4 standing to bring this protest before the Board. Pursuant to order of  
5 the Board, the motion was briefed by the parties and then heard on  
6 December 9, 2003. By ruling dated, January 2, 2004, Administrative  
7 Law Judge (ALJ) Kenneth B. Wilson denied the motion as to RFLM. The  
8 ALJ granted the motion as to Fladeboe A.G. upon a determination that  
9 Fladeboe A.G. was not, and never had been a franchisee of Isuzu.<sup>3</sup>

10           3.     On April 21, 2004, Isuzu filed a second motion to dismiss  
11 which was, pursuant to order of the Board, briefed by the parties and  
12 heard on May 5, 2004, before ALJ Wilson. Isuzu's second motion relied  
13 on Duarte & Witting, Inc. v. New Motor Vehicle Board (2002) 104  
14 Cal.App.4<sup>th</sup> 626 for its argument that the protest raised no contested  
15 issues of material facts. The ALJ determined that the facts in this  
16 protest were distinguishable from those in Duarte and, accordingly,  
17 denied the motion.

18           4.     Hearing on the merits of the protest was held before ALJ  
19 Wilson on May 10, 11, 12, and concluded on May 26, 2004. Law Offices  
20 of Michael M. Sieving, Michael M. Sieving, Esq., 350 University  
21 Avenue, Suite 105, Sacramento, California represented Protestant.  
22 Brian Cave LLP, Bruce L. Ishimatsu, Esq. and Kaye E. Chaffee, Esq.,  
23 120 Broadway, Suite 300, Santa Monica, California and Isuzu counsel,  
24 Paul M. Hirose, Esq., 13340 183<sup>rd</sup> Street, Cerritos, California,  
25 appeared on behalf of Respondent.

26  
27  
28 <sup>3</sup> This ruling was limited exclusively to the issue of Fladeboe A.G.'s standing as a franchisee within the Board's jurisdiction.



1 through Mr. Fladeboe, declined to accept the terms of the new  
2 agreement and refused to sign it.

3 9. Mr. Fladeboe then determined to transfer his Isuzu assets  
4 from Fladeboe VW to Fladeboe A.G. In September 2002, Mr. Fladeboe  
5 again sought Isuzu's approval, and on January 3, 2003, Isuzu withheld  
6 consent, citing, among other things, the dissolution of RFLM and the  
7 pre-approval transfer of the Isuzu assets to Fladeboe A.G.

8 10. On or about January 7, 2003, RFLM received written notice  
9 from the Department of Motor Vehicles, Licensing Operations Division,  
10 that it had been notified of the dissolution of RFLM and that  
11 subsequent to the dissolution, new Isuzu vehicle sales had been  
12 reported as transacted under the names of Fladeboe Isuzu, Ray Fladeboe  
13 Isuzu, Fladeboe Honda and RFLM. On that basis, RFLM's license was  
14 automatically cancelled.

15 11. Following the license cancellation, on January 24, 2003,  
16 Isuzu deactivated RFLM's access to the Isuzu Communication System  
17 (ICS). The ICS is a private computer network linking Isuzu with its  
18 dealers for day-to-day business communications, including reports of  
19 new vehicle sales and warranty claims. From that point on RFLM's  
20 dealer access code could not be used to order new inventory or parts,  
21 but remained available for other communications. In September 2003,  
22 RFLM's access was terminated.

23 12. Sometime prior to July 31, 2003, Mr. Fladeboe directed his  
24 accountant to examine the books and records of his corporations to  
25 determine if there were any sales incentive and warranty reimbursement  
26 claims that had not been paid by Isuzu, and if so, the amount thereof.  
27 On September 15, 2003, the accountant reported a list containing nine  
28 vehicle sales for which incentives had not been received, and 16

1 warranty claims outstanding, representing \$34,000 and \$11,398.88,  
2 respectively, for a total amount of \$45,398.88 in all.<sup>6</sup>

3 13. On or about September 22, 2003, Mr. Fladeboe, as Chief  
4 Executive Officer of Fladeboe A.G. mailed Isuzu a copy of the  
5 accountant's report with a demand for prompt payment. Having received  
6 no response from Isuzu, Protestant filed this protest one month later  
7 on October 21, 2003.

8 **ISSUES PRESENTED**

9 14. Section 3065 provides, in essence, that all claims under a  
10 franchisor warranty reimbursement program must be approved or  
11 disapproved within 30 days of receipt. If a claim is disapproved, the  
12 franchisor must notify the franchisee in writing with a statement of  
13 the specific reason within that 30-day period. Any claim not  
14 specifically disapproved is deemed approved on the 30<sup>th</sup> day. All  
15 approved claims must be paid within 30 days following the date of  
16 approval. Warranty reimbursement claims may not be disapproved except  
17 for good cause, such as performance of non-warranty repairs, lack of  
18 material documentation, or fraud.

19 15. In accord with Section 3065, the only issues the Board may  
20 consider are whether Isuzu notified RFLM of the specific reason for  
21 disapproving the subject warranty reimbursement claims within the  
22 statutory period, and whether there was good cause for such  
23 disapproval.

24 16. Notwithstanding the above, both parties sought throughout  
25 the course of this proceeding to present evidence and argument  
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27 <sup>6</sup> The outstanding incentive claims are the subject of the related Protest No. PR-  
28 1880-03.

1 pertaining to additional issues involving the corporate status of RFLM  
2 and to Isuzu's conduct concerning the proposed transfers of RFLM's  
3 Isuzu-related assets.<sup>7</sup> The findings set forth render it unnecessary,  
4 even if it were permissible under section 3065, for the Board to  
5 determine these issues.<sup>8</sup>

6 FINDINGS AS TO WHETHER PROTESTANT WAS NOTIFIED  
7 OF THE WARRANTY CLAIM DISAPPROVALS

8 17. The testimony of Mr. Michael D. Brus<sup>9</sup> established that  
9 Isuzu's principal procedure for approving or disapproving warranty  
10 reimbursement claims involves the use of the ICS. Under that  
11 procedure, a dealer inputs a repair order into the database, and  
12 Isuzu's computer compares that information to the applicable warranty  
13 program for the particular vehicle. The claim is then automatically  
14 approved or disapproved and immediately reported back to the dealer.

15 18. At issue are 16 warranty reimbursement claims for work  
16 reported between October 2002 and February 2003, totaling \$11,398.88.  
17 Protestant offered no evidence to establish that it had not been  
18 notified within the statutory period that the subject warranty claims  
19 had been rejected and in most cases used the ICS to respond to Isuzu  
20 regarding them.

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23 ///

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25 <sup>7</sup> On January 8, 2003, this Board considered and declined to grant RFLM's petition  
26 requesting that the Board compel Isuzu to issue an OL 124 to Fladeboe A.G.

27 <sup>8</sup> It is understood that these issues are involved in litigation between the parties  
pending in the Orange County Superior Court.

28 <sup>9</sup> Mr. Brus is Isuzu's executive manager of warranty and field operations. A  
substantial portion of his direct testimony was presented under examination by  
Protestant's counsel under Evidence Code section 776 (adverse witness).

FINDINGS AS TO WHETHER THERE WAS GOOD CAUSE  
FOR DISAPPROVING THE WARRANTY CLAIMS

19. The testimony of Michael Brus established that in each instance the subject warranty claims were denied automatically by the ICS for one or more valid reason including claims improperly documented, not covered under the vehicle warranty, duplicated entries, or that the claim was never entered into the ICS. Several of the claims were denied because they were entered after the January 24, 2003, deactivation following RFLM's license termination. Although in the case of an improperly documented claim, the dealer may correct the error within 30 days, RFLM failed to successfully do so, resulting in the claim being automatically cancelled.

20. Protestant offered no credible evidence to dispute that any of the reimbursement denials were invalid or improper. Both protestant's witnesses Linda Coletti and Debbie Davies purported to allege that the system deactivation prevented RFLM from correcting prior claims that had been improperly documented. Neither witness, however, had any responsibility for submitting or correcting claims on the ICS.<sup>10</sup> Furthermore, Mr. Brus testified that the system deactivation did not prevent the correcting and processing of these claims.

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<sup>10</sup> These functions were, in fact, contracted out to an independent claims service agency.

21. The following chart summarizes the warranty reimbursement claims<sup>11</sup>, the difference in the amount submitted by RFLM and paid by Isuzu, and the reason for disapproval:

REPAIR ORDER	DIFFERENCE	REASON FOR DISAPPROVAL
05	\$121.97	Out of warranty by miles and wrong part number.
266	\$62.40	Claim paid as submitted by dealer - cannot account for claimed amount difference.
287	\$134.11	Out of warranty by months.
321	\$3,098.96	Claim returned to dealer for customer name verification.
340	\$16.87	Claim submitted twice by dealer, it was paid once.
411	\$302.16	Claim denied as not warrantable.
427	\$442.00	Labor operation code is not valid.
496	\$193.10	Out of warranty by months, and claim sent back to dealership for open campaign.
541	\$0.00	Dealer resubmitted after payment.
542	\$857.19	No warranty claims submitted into the system under VIN.
606	\$372.89	No claims submitted into the system under VIN.
615	\$2,575.50	Repair order date is after the dealer's termination date and the labor operation is not valid for the vehicle.
619	\$259.45	No claims submitted into the system under VIN.
620	\$23.40	No claims submitted into the system under VIN.
627	\$23.40	No claims submitted into the system under VIN.

<sup>11</sup> Repair order no. 609 for \$464.89 was submitted by RFLM for payment. However, Mr. Brus testified that the vehicle repaired was not an Isuzu VIN and therefore, it is not reflected on the above chart.

1 DETERMINATION OF ISSUES

2 22. The Board finds that Isuzu provided written notice as  
3 required by Section 3065.

4 23. The Board finds that there was good cause for each of the  
5 contested incentive claim disapprovals.

6 CONCLUSION

7 As noted above, both parties in this proceeding applied  
8 considerable time and effort to the question of RFLM's status after  
9 its corporate dissolution. However, the evidence presented at the  
10 hearing conclusively establishes that RFLM's capacities as a  
11 corporation were not the basis for these warranty claim disapprovals.  
12 Therefore, the Board herein makes no finding or determination  
13 concerning RFLM's corporate status.

14 Having determined that Isuzu did not fail to notify RFLM of the  
15 subject warranty reimbursement claim disapprovals, and having found  
16 that good cause existed for each one, the Board concludes that RFLM is  
17 not entitled to the amount claimed or any part thereof. The protest  
18 is overruled.

19 I hereby submit the foregoing which  
20 constitutes my proposed decision in  
21 the above-entitled matter, as the  
22 result of a hearing before me and I  
23 recommend this proposed decision be  
24 adopted as the decision of the New  
25 Motor Vehicle Board.

26 DATED: September 7, 2004

27 By: Kenneth B. Wilson

28 KENNETH B. WILSON  
Administrative Law Judge

Chon Gutierrez, Director, DMV  
Mary Garcia, Manager  
Occupational Licensing, DMV