

1401 - 21st Street, Suite 407
Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
CAMPBELL-BECKER, INC.,) Protest No. PR-195-78
dba MIRACLE MAZDA,)
Protestant,)
vs.)
RENAULT WEST, INC.,) Filed: January 25, 1979
Respondent.)

DECISION

The attached Proposed Decision of the Hearing Officer is hereby adopted as modified 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 25th day of January, 1979.

/s/ Florence S. Post
FLORENCE S. POST

/s/ John B. Oakley
JOHN B. OAKLEY

/s/ Joseph Trejo
JOSEPH TREJO

/s/ Kathleen O. Turner
KATHLEEN O. TURNER

Public Members
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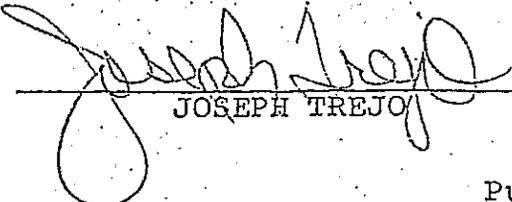
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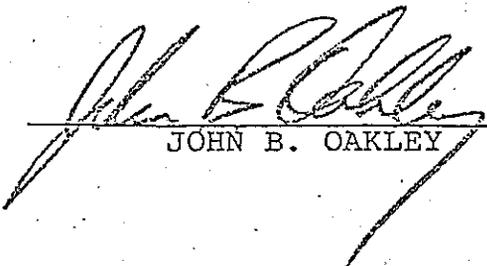
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PROPOSED DECISION

Procedural Background

1. Respondent, Renault West, Inc. ("Renault"), gave notice on November 2, 1978, pursuant to section 3060 of the Vehicle Code^{1/} of its intention to terminate the franchise of protestant, Campbell-Becker, Inc., dba Miracle Mazda ("Miracle"), franchised as both a Mazda and Renault dealer, located at 2150 Harbor Boulevard, Costa Mesa, California.

2. On November 8, 1978, Miracle filed a protest with the New Motor Vehicle Board ("Board").

3. A hearing was held pursuant to section 3066 before Anthony M. Skrocki, Hearing Officer for the Board, on

1. All references are to the Vehicle Code unless otherwise indicated.

January 3 and 4, 1979, in Sacramento. Renault was represented by Richard D. DeLuce, Esq., of the law firm of Lawler, Felix & Hall. Miracle was represented by Sidney I. Pilot, Esq., of the law firm of Sidney I. Pilot, a Professional Corporation.

Issues Presented

4. Renault contends that good cause exists to terminate Miracle's franchise for the following reasons:

(a) The amount of business transacted by Miracle as compared to the business available to it has been inadequate (§3061(1));

(b) The investments necessarily made or obligations incurred by Miracle to perform its part of the franchise have been minimal (§3061(2));

(c) The permanent investment made by Miracle has been minimal (§3061(3));

(d) It would not be injurious to the public welfare for Miracle's franchise to be terminated (§3061(4));

(e) Miracle has inadequate sales facilities, parts inventory, and qualified service personnel, with regard to its Renault franchise, to reasonably provide for the needs of the consumers and has been rendering inadequate service to the public (§3061(5));

(f) Miracle has failed to fulfill the warranty obligations of Renault to be performed by Miracle (§3061(6));

(g) Miracle has failed to comply with the terms of the franchise (§3061(7)).

Findings of Fact

Findings Relating to the Amount of Business Transacted by Miracle as Compared to the Business Available to It (\$3061(1)).

5. Miracle was franchised as a Renault dealer effective September 26, 1977, and was at that time an established Mazda dealer. (Exh. 7.) Renault's notice of termination to Miracle was dated October 27, 1978. (Exh. 16.)

6. For the first 11 months of 1978 Miracle spent \$20,250 on advertising. The majority of this sum was spent on combined Mazda-Renault ads. (RT 330, 336; Exh. O.) Renault promised to give Miracle a \$1,200 advertising allowance at or near the inception of the franchise. Miracle spent this sum but to date has not been reimbursed. (RT 338.)

7. Miracle paid its salespersons 30% of the gross profit on Renault sales compared to 25% of the gross profit on Mazda sales. (RT 336.) Miracle paid a \$75 bonus to the top Renault salesperson each month. (RT 336.)

8. Miracle is located on Harbor Boulevard in Costa Mesa, Orange County. Harbor Boulevard is one of the 2 largest auto rows in the Los Angeles metropolitan market. (RT 132.)

9. In 1978 there were only 2 other Renault dealers in Orange County. One resigned and the only other dealer franchised by Renault in Orange County, B & Z Imports, is located in Huntington Beach, a distance of approximately 6 miles from Miracle. (RT 36; Exh. 1.)

10. Miracle's sales performance in 1978 was approximately equal to the other two dealers in Orange County. B & Z Imports,

the only other presently franchised Renault dealer in Orange County is one of the older Renault dealers in Renault's territory of 10 states and is not presently considered a candidate for termination due to its good service record.

(RT 36, 56, 44.)

11. Renault has indicated its intention to establish an additional franchise in Orange County at County-Wide AMC-Jeep in Garden Grove (RT 114), but this establishment is being protested by Miracle. (See PR-196-78.)

12. Miracle's total sales of new vehicles for the calendar year 1978 was 385. (RT 345.) Of this number 27 were Renaults and 358 were Mazdas. (RT 394, 487.)

13. Out of 66 dealers in Renault's 10 state territory Miracle was in 45th place in sales through November, 1978. (RT 120, 44, 103.)

14. Out of 13 Los Angeles metropolitan area Renault dealers (11 of which are in Los Angeles County and 2 in Orange County) Miracle placed 10th or 11th in sales through November, 1978. The two dealers who sold less are in the process of selling their franchises. (RT 121.)

15. Renault registrations on a geographical comparison basis with other imports through September, 1978, were as follows:

	<u>Orange County</u>	<u>L.A. County</u>	<u>Calif.</u>	<u>Renault West</u>	<u>U.S. Total</u>
Total Renault Registrations	105	575	1716	2674	9181
Total Import Registrations	33158	98813	309392	458042	1537262
% Renault to Other Imports	.32%	.58%	.55%	.54%	.60%

(Exh. 29.)

16. Sales by Renault dealers in Los Angeles and Orange County through November, 1978, were as follows:

<u>Dealer</u>	<u>Total Sales</u>	<u>Avg. Per Month</u>
Kendon	129	11.7
Santa Monica	118	10.7
Manhattan Beach	112	10.2
Division	104	7.5
Sherman Oaks	89	8.1
Alhambra	69	6.3
Long Beach	37	3.4
Huntington Beach	26	2.4
Costa Mesa	25	2.3
Monrovia	23	2.1
	<hr/>	<hr/>
	732	6.7

(Exh. 30.)

Facts Relating to the Investments Necessarily Made or Obligations Incurred by Miracle to Perform Its Part of the Franchise (\$3061(2)).

17. Prior to Renault granting Miracle a franchise, Miracle agreed to acquire additional property in order to move its used car operation from the main facility. The purpose of this was to provide sufficient space to accommodate Renault products. (RT 10, 11, 26, 32, 363.)

18. The additional property (hereinafter referred to as the "second lot") was obtained as a result of executing a sub-lease on March 8, 1978, for property located on the same block as the main facility. (RT 274.) The sub-lease term is for a period of 2 years from April 1, 1978, ending March 31, 1980,

with an option to extend for an additional 2 years. The rent for the first 2 years is \$900 per month for a total of \$21,600. (Exh. G.)

19. There are no service or showroom facilities on the second lot. There is a small mobile office building (18' x 6') which was already on the lot and purchased from the prior owner. (RT 440, 441.)

20. When the Renault franchise was first obtained, Miracle purchased an initial franchise package of Renault parts and tools at a cost of \$9,505, \$1,500 of which was spent for a sign (Exh. 5) ultimately returned to Renault as City approval to install it could not be obtained. (RT 293, Exh. 3.) Renault accessories were also ordered at this time costing \$1,315. (RT 293; Exh. 5.)

21. Through August, 1978, Miracle for 1978 purchased parts costing \$4,644.34. (RT 49.)

22. A smaller Renault sign, which met City code standards, was purchased at a cost of \$300. (RT 29.) In addition, approximately \$1,000 was spent in an effort to comply with the City of Costa Mesa sign ordinance. (RT 293.) A deposit of \$300 was lost when an order for one Renault sign had to be cancelled due to a change in the City's sign ordinance enforcement policy. (RT 303, 308; Exh. J, K.)

23. In order to obtain City approval of the Renault sign, Miracle had to agree that in about 2 years it would lower and perhaps change its Mazda sign (valued at \$6,300) under the City's sign amortization program. (RT 312, 316; Exh. L.)

24. Miracle paid approximately \$1,000 in wages to its mechanics while they attended Renault schools. (RT 294.)

Facts Relating to the Permanency of
Investment Made by Miracle (§3061(3)).

25. If terminated Renault will repurchase from Miracle:

(a) All new Renault vehicles of current model year
(RT 493; Dealer Sales Agreement, ¶ 26(A)(1));

(b) All new and unused Renault parts and accessories
and service supplies in saleable condition (RT 493; Dealer
Sales Agreement, ¶ 26(A)(2));

(c) All Renault signs and Renault special tools and
equipment in usable condition (RT 493; Dealer Sales Agreement,
¶¶ 26(A)(3) and (4)).^{2/}

2. Exact franchise language governing Renault's repurchase
obligation is as follows:

A. PRODUCTS SUBJECT TO REPURCHASE BY SELLER

Upon termination of this Agreement by SELLER or, at
the discretion of SELLER, upon termination of this
Agreement by DEALER, SELLER will purchase from DEALER,
and DEALER will sell to SELLER:

(1) all new and unused Renault VEHICLES of current
model purchased by DEALER from SELLER which may be on
hand and in saleable condition in the stock of DEALER
at the prices paid by DEALER therefor, less refunds
and allowances previously paid or credited with respect
to such VEHICLES;

(2) all new and unused genuine Renault parts, accesso-
ries and service supplies in saleable condition which
were purchased by DEALER direct from SELLER within the
six (6) months preceding the effective date of termina-
tion and which are on hand in the stock of DEALER, at
the then current dealer net prices, such parts to be
packed by DEALER for shipment;

(3) all signs, in usable condition, belonging to
DEALER of a type recommended by SELLER and bearing the
word "Renault" or any other trade-mark or trade name of
RENAULT or relating to RENAULT COMPANY PRODUCTS, at the
original cost price thereof reduced by (cont. on pg. 8)

26. Other than the items mentioned under Paragraphs 17 through 24, and the time and effort expended by Miracle in relation to its efforts to promote Renault products, there was no other permanent investment made by Miracle pertaining to the Renault franchise. -Miracle was a Mazda franchisee prior to acquiring the Renault franchise and the facilities have not been changed in the last several years. (RT 163, 166, 167.)

Facts Relating to Whether It Would Be Injurious or Beneficial to the Public Welfare for Miracle's Franchise to Be Terminated (§3061(4)).

27. There is at present only one other franchised Renault dealer in Orange County. (RT 55.) Renault declared a moratorium on appointing new dealers effective approximately April 1, 1978. (RT 526.) This was due to negotiations with American Motors Corporation, the results of which are not yet fully known. (RT 527.)

28. In November, 1978, the moratorium was partially lifted to the extent that Renault franchises would be offered only to AMC dealers if an additional Renault dealer was needed in an area or if there was no representation of Renault at all in an area. (RT 527, 528.)

29. The owners of Miracle own several other dealerships

straight line depreciation based on a useful life of five years;

(4) if DEALER desires to sell the same, all special tools and equipment of a type recommended by SELLER and designed specifically for service of RENAULT COMPANY PRODUCTS, at the original cost price thereof reduced by straight line depreciation based on a useful life of five years.

in California and have an excellent reputation in the industry as to both sales and service. (RT 247, 248; Exh. 1, 3.)

30. The termination notice sent by Renault was dated only 13 months after the franchise was granted to Miracle. (Exh. 7, 16.)

Facts Relating to Whether Miracle Has Inadequate Renault Sales and Service Facilities, Parts Inventory, and Qualified Service Personnel to Reasonably Provide for the Needs of the Consumers, and Has Been and Is Rendering Adequate Services to the Public (§3061(5)).

31. Miracle has spent from the time of its enfranchisement through August, 1978, \$12,649 on Renault parts and tools. (See ¶¶ 20 & 21, supra.) There was no evidence presented of any unusual number of customer complaints regarding unavailability of parts at Miracle.

32. Miracle has had difficulty in obtaining and retaining a mechanic for Renault automobiles. The first person designated to work on Renault vehicles was Mike Guirsch, Miracle's service manager, who, in September, 1977, attended Phase I of three different training schools offered by Renault, designated as Phases I, II, and III. (RT 411; Exh. 17.)

33. A second mechanic, Bao Pham, was designated to work on Renaults, and he also attended the Phase I program in October, 1977. (RT 411; Exh. 17.) Pham quit in March, 1978, and Guirsch quit in the first part of June, 1978. (RT 411, 319.)

34. Another mechanic was hired in May, 1978. Renault was notified and sent an instructor to Miracle to help train this person. This mechanic quit in 2 to 3 weeks (approximately the end of May). (RT 412, 413.)

35. Joe Hubbard, a mechanic employed by Miracle, was then designated to be a Renault mechanic. Miracle attempted to enroll Hubbard in the Renault training schools in June and July, 1978, but Renault offered no schools during this period due to vacation schedules and cross-training programs being conducted in conjunction with American Motors Corporation. (RT 414, 80; Exh. 7.) Hubbard attended Phases I and II in August, 1978, and Phase III in September, 1978, and Phase II again in October, 1978. (Exh. 17.) No other schools have been offered by Renault since Hubbard was designated to be a Renault mechanic and Hubbard is deemed to be a fully trained Renault mechanic and was such prior to the notice of termination being sent. (RT 58, Exh. 16, 17.)

36. The franchise requires only one Renault trained mechanic. (RT 58.)

37. In 1972 and 1973 Miracle's facilities were adequate to sell and provide service for a sales volume of approximately 1,000 new cars per year (RT 163, 166, 167), compared to the 1978 new car sales of 385 (RT 345).

38. There was no contention that Miracle has inadequate service facilities. (Exh. 2, 3.)

Facts Relating to Whether Miracle Has Failed to Fulfill the Warranty Obligations of Renault to Be Performed by Miracle (§3061(6)).

39. Although there was some evidence of a complaint by one customer, this was not ultimately determined to be due to any deficiency on the part of Miracle. There was also evidence

of "good" work done by Miracle.

Facts Relating to Whether Miracle Has Failed to Comply With the Terms of the Franchise (§3061(7)).

40. Renault requires Miracle to obtain approval from Renault prior to relocating its Renault sales operations.

41. The second lot acquired as a used car lot has been used for storage of both new Mazdas and Renaults. (RT 260.)

42. There was no evidence that any sales of new Renaults occurred or were consummated at the second lot. (RT 92, 242.)

43. The second lot has not been licensed as a new car facility. (RT 384, 385.)

44. Miracle has not relocated its Renault sales operation to the second lot. (RT 355.)

45. Renault requires Miracle to erect product identification signs.

46. The City of Costa Mesa has a strict sign control ordinance. (Exh. H.)

47. Renault was aware at the time of granting the franchise that difficulty might be encountered in obtaining City approval to erect a sign. (RT 68, 85.)

48. After the franchise was approved by Renault, Renault became aware of the strict City ordinance governing signs (RT 69) and a month after the franchise Renault was aware the City would not allow the large 12 foot product sign ordered by Miracle as part of its initial package. (RT 105, 138, 396.) The 12 foot sign was never approved by the City. (RT 138.)

49. In addition to having difficulty in attempting to meet the City ordinance, Miracle also had difficulty in getting the City required written approval of the owner of the premises to erect a sign. (RT 316, 316.)

50. Miracle explored other alternatives to erecting a new sign such as modifying an existing one or constructing one that did not exceed the height of the building. Despite diligent efforts, Miracle was not successful in obtaining a City permit for the initially ordered sign. A sign that complied with the City ordinance was not received from Renault until August or September, 1978. (RT 311, 395-408; Exh. J, K, L.)

Determination of Issues

1. Renault has failed to establish that good cause exists for terminating Miracle's franchise for the following reasons:

(a) The failure of Miracle to transact as much Renault business as is available to it is due to the fact that Miracle was a franchisee for only 13 months before the date of the notice of termination.

(b) Miracle has made investments and incurred obligations to perform its part of the franchise, and there has not been sufficient time under the circumstances to ascertain whether such commitments will bear fruit for both Miracle and Renault.

(c) Although Miracle's permanent investment as it relates to Renault is not substantial, the termination of the franchise would result in some loss of Miracle's investment at a time which appears to be premature given the difficulties experienced by Miracle in attempting to establish itself as a Renault dealer.

(d) Termination of the franchise would be injurious to the public welfare as it would deprive Orange County of a needed Renault sales and service facility. The owners of Miracle are experienced and respected new automobile dealers capable of furthering the interests of the public, themselves and Renault.

(e) Miracle has an adequate parts inventory of Renault parts given its present sales and service volume. Miracle has had difficulty in obtaining and retaining a qualified Renault mechanic but acted diligently and had such a mechanic prior to notice of termination. Miracle has been and is rendering adequate services to the public.

(f) Miracle has fulfilled the warranty obligations of Renault.

(g) Miracle has substantially complied with the terms of the franchise. Miracle has not moved its Renault sales operation to the second lot. Neither has Miracle been in breach of its obligation to erect product identification signs as it has acted reasonably when confronted with a strict City ordinance making erection of the contemplated sign illegal.

* * * * *

The following proposed decision is respectfully submitted:

Good cause has not been established to terminate Miracle's

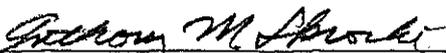
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franchise. The protest is sustained.

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 dates at Sacramento, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: January 19, 1979.



ANTHONY M. SKROCKI
Hearing Officer
New Motor Vehicle Board