

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)
POLLARD-RAVENS-CROFT CO.,) Protest No. PR-200-78
a California Corporation,)
Protestant,)
vs.)
MERCEDES-BENZ OF NORTH)
AMERICA, INC., a Delaware)
Corporation,)
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 29th day of June, 1979.


FLORENCE S. POST
President
New Motor Vehicle Board

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)
POLLARD-RAVENSCROFT CO.,) Protest No. PR-200-78
a California Corporation)
Protestant,)
vs.)
MERCEDES-BENZ OF NORTH)
AMERICAN, INC., a Delaware)
Corporation, Respondent.)
_____)

PROPOSED DECISION

Procedural Background

1. Respondent, Mercedes-Benz of North American, Inc., ("Mercedes-Benz"), gave notice on November 6, 1978, by a letter dated November 1, 1978, pursuant to section 3060 of the Vehicle Code^{1/} of its intention to terminate the franchise of Protestant, Pollard-Ravenscroft Co., dba Pollard-Wittman-Robb Chevrolet ("Pollard-Wittman-Robb"), located at 6001 Van Nuys Boulevard, Van Nuys, California 94108.

2. Pollard-Wittman-Robb filed a protest with the New Motor Vehicle Board on November 15, 1978.

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

3. A pre-hearing conference was held before Anthony M. Skrocki, Hearing Officer of the New Motor Vehicle Board on January 12, 1979, and the hearing was held on January 31, February 1, 2, 5, 6, 7, 8, 19, 20, 21, 22, and 23, 1979.

Respondent was represented by Martha G. Bannerman and Jeffrey P. Smith of Adams, Duque & Hazeltine. Protestant was represented by Sidney I. Pilot and A. Albert Spar, of Sidney I. Pilot, a Professional Corporation, and by Jerald R. Olf and Stephen W. Johnson.

Issues Presented

Respondent contends that good cause exists for terminating the franchise of Protestant for the following reasons:

1. The ownership and management of Pollard-Wittman-Robb were changed without prior approval of Mercedes-Benz.

2. The approval of the transfer of ownership and management was not unreasonably withheld.

3. It would not be injurious to the public welfare for the franchise to be terminated or replaced (§3061(4))

4. Pollard-Wittman-Robb failed to comply with the terms of the franchise (§3061(7)).

It was stipulated that the other factors enumerated in section 3061(1), (2), (3), (5) and (6) were not considered by Mercedes-Benz in reaching its decision to terminate Pollard-Wittman-Robb. Thus it is deemed true for purposes of this

hearing that, up to the time of the notice of termination,
Pollard-Wittman-Robb:

(a) was conducting at least an adequate amount of
business (§3061(1));

(b) had made substantial permanent investment and
incurred substantial obligations (§3061(2)(3));

(c) had adequate sales and service facilities,
adequate parts and personnel and was rendering adequate service
to the public (§3061(5)) and;

(d) was fulfilling the warranty obligations of
Mercedes-Benz (§3061(6)).

Preliminary Determination of Burden
of Proof of Issues Presented

1. Vehicle Code section 3066(b) places on the franchisor
the burden of proof to establish that there is good cause to
terminate a franchise. Thus, the burden of proving good cause
to terminate based on the factors enumerated in Issues 1 (change
of management or ownership without approval), 3 (injury to the
public welfare), and 4 (failure of Pollard-Wittman-Robb to comply
with the terms of the franchise) is clearly on Mercedes-Benz.

2. Vehicle Code section 3066(b), which places the burden
of proof of good cause to terminate on Mercedes-Benz does not
expressly make reference to the factors to be considered pursuant
to section 3061. Section 3066(b) refers specifically to
protests filed pursuant to section 3060. Section 3060 establishes
a notification requirement with a time prescription upon the

franchisor desiring to terminate as a result of, "Transfer on any ownership or interest in the franchise without the consent of the franchisor, which consent shall not be unreasonably withheld".

3. If it is determined that a franchisor has a right to terminate a franchise for transfer of any ownership or interest without the consent of the franchisor, such right can exist only if there is good cause for withholding such consent.

4. Therefore, the burden of proof to establish that good cause exists to justify the withholding of such approval (for granting approval would not result in termination) must necessarily rest on Mercedes-Benz.

Facts Relating to the Ownership and
Management of Pollard-Wittman-Robb

5. Pollard-Wittman-Robb became a Mercedes-Benz franchisee in April, 1972. Since at least January 1, 1976, C. J. Wittman (Wittman) has owned a 50 percent interest and R. Paul Robb (Robb) has owned the other 50 percent.

6. Although Pollard-Wittman-Robb was managed by Wittman, nothing in the Dealer Agreement precluded Robb from participating in active management of Pollard-Wittman-Robb. No other Dealer Agreements with other franchisees have been modified by Mercedes-Benz to restrict listed principals from such participation.

7. Pollard-Wittman-Robb is also a Chevrolet franchisee. General Motors requires its dealer-operators who become such in another dealership to have a buy out agreement with the other dealer-operator of the first dealership. In 1971 Robb was approved by General Motors to become what General Motors calls a chain-operator and acquired an interest in Prestige Pontiac (Prestige) in Van Nuys. Wittman and Robb, in 1971 (prior to acquiring the Mercedes-Benz franchise) entered into buy out agreements for Pollard-Wittman-Robb and Prestige. General Motors required the buy out to occur within five years. In 1976, Chevrolet was making inquiries as to when this would occur.

8. During the time period Wittman and Robb owned Pollard-Wittman-Robb and Prestige, they also owned Century Chevrolet (Century) in Inglewood, and Classic Buick-Pontiac (Classic) in Palm Springs.

9. The funds to purchase Century were borrowed from Crocker Bank. The funds to purchase Pollard-Wittman-Robb were borrowed from Wells Fargo Bank.

10. Wittman first decided to buy out Robb's interest in Pollard-Wittman-Robb in late 1976 and entered into a written agreement to do so with Robb in November 1976. An escrow was opened but dissolved in the spring of 1977 when Wittman could not raise the funds needed to accomplish the purchase.

11. Wittman had hoped to borrow sufficient money to buy out Robb and use part of the borrowed funds to pay off debts and infuse money into Pollard-Wittman-Robb.

12. Wittman, at the end of 1976, told Mercedes-Benz of his desire to buy out Robb.

13. Wittman had told Mercedes-Benz that Pollard-Wittman-Robb was in financial trouble and in April 1977, Mercedes-Benz was aware Pollard-Wittman-Robb had been put on C.O.D. for parts by other Mercedes-Benz dealers.

14. By mid or late 1977, the financial situation at Pollard-Wittman-Robb was desperate and the doors would had to have been closed if additional funds were not found.

15. Pollard-Wittman-Robb was in need of money because Wittman and Robb had been drawing out substantial amounts of money and showing such "loans" on Pollard-Wittman-Robb's books as "customer accounts receivables". Century had lost in excess of a half a million dollars and Classic had lost about a quarter of a million dollars. Each partner had bought a ranch and Wittman had purchased numerous race horses (less than 100). Wittman's ranch was also losing money and funds were taken out of Pollard-Wittman-Robb, used for the ranch, and shown as either an account receivable or an expense of the operation of Pollard-Wittman-Robb.

16. In April of 1977, Pollard-Wittman-Robb was out of trust in the amount of \$1,556,000. In August 1977 the out of

trust amount was \$1,391,000, but the August 1977 Pollard-Wittman-Robb operating report submitted to Mercedes-Benz showed a positive cash equity of \$250,000 (a difference of over \$1,600,000 between the true financial condition and the reported financial condition).

17. In January 1977, the "loans" made by Wittman and Robb to finance their other activities totalled \$1,205,081, and the net worth of Pollard-Wittman-Robb, as reported on the operating report for that period, indicated \$1,097,093. The "loans" should have been properly categorized in the operating report as "notes and accounts receivables from officers" rather than as "customer receivables". Considering this factor alone, the net worth of Pollard-Wittman-Robb would have been a negative \$107,168.

18. The operating reports also indicated that the accounts payable were being reduced in amount even though the accounts payable still existed.

19. In August 1977, the working capital of Pollard-Wittman-Robb was reported to Mercedes-Benz as being \$1,346,000, whereas in actuality it was a negative \$213,000.

20. Mercedes-Benz stipulated that the Pollard-Wittman Robb operating reports, submitted by Pollard-Wittman-Robb prior to September 1978, were false.

21. Neither Wittman nor Robb nor their owned entities had the cash to repay the loans owed to Pollard-Wittman-Robb or to cure the out of trust situation at Pollard-Wittman-Robb.

22. In August 1977, General Motors Acceptance Corporation (GMAC) threatened to terminate their flooring agreement with Pollard-Wittman-Robb and notify both Chevrolet and Mercedes-Benz.

23. Wittman and Robb made various unseccessful attempts to buy each other out.

24. Wittman attempted desperately, but without success, to obtain loans from many banks and various U. S. and foreign financing sources.

25. In September 1977, Wittman contacted Jack R. Urich (Urich) to determine if Urich would be interested in buying a 50 percent interest in Pollard-Wittman-Robb. After Urich's accountant reviewed Pollard-Wittman-Robb's financial statement, and after a check with his banker as to Pollard-Wittman-Robb's financial condition, Urich was interested in purchasing the 50 percent interest.

26. In September 1977, after the decision to buy 50 percent of the stock, Wittman informed Urich by phone (Urich was in Texas at the time) that Pollard-Wittman-Robb had to have cash to keep the doors open. Urich therefore agreed and arranged for an advance of \$250,000 of the price he was going to pay for the 50 percent ownership interest. This sum was paid in September 1977, and used as working capital for Pollard-Wittman-Robb.

27. Between the date of the advance of \$250,000 in September and October 11, 1977, Urich discovered that Wittman's

stock certificates were in the possession of Wells Fargo Bank as security for a loan made to Wittman and Robb. Wittman had previously told Urich his (Wittman's) certificates were not encumbered but had been lost.

28. Urich agreed to advance an additional \$250,000 to be used in part to remove the encumbrance on Wittman's certificates, (\$163,384) with the remainder (\$86,615) to be used as working capital of Pollard-Wittman-Robb, or to pay off other indebtedness of Wittman and Robb.

29. No later than October 4, 1977, Wittman informed Mercedes-Benz of his desire to purchase Robb's stock and then re-sell the stock to Urich.

30. On October 11, 1977, Wittman and Urich signed an agreement conditioned on approval of Urich by Mercedes-Benz. The agreement recited that Wittman already had an agreement with Robb for the acquisition by Wittman of Robb's stock, and that Robb's stock when purchased by Wittman, was to be sold to Urich at a price of \$896,000 of which \$250,000 had already been paid (the working capital advance in September. A second payment of \$250,000 was made on or about October 11 to unencumber Wittman's stock which was held by Well's Fargo. Wittman's certificates (obtained from Wells Fargo) were transferred to the possession of Urich as security for Wittman's performance of the October 11, 1977 agreement.

31. A third advance in the amount of \$220,000 was also made by Urich on October 12, 1977 and used to pay the joint indebtedness of Wittman and Robb to Crocker Bank. Thus by October 12, 1977, Urich had already advanced the sum of \$770,000 for the use and benefit of Wittman, Robb and Pollard-Wittman-Robb. The first \$250,000 was used as working capital for Pollard-Wittman-Robb. The second \$250,000 was used primarily (and perhaps totally) to pay off joint indebtedness of Wittman and Robb to Wells Fargo (secured by Pollard-Wittman-Robb assets) and encumber Pollard-Wittman-Robb stock. The third payment of \$220,000 was used to pay off joint indebtedness of Wittman and Robb to Crocker Bank.

32. On October 25, 1977, Urich and Wittman met with Mercedes-Benz representatives in the Los Angeles Zone office of Mercedes-Benz to discuss the steps required for Urich's approval, but Mercedes-Benz was not informed of the above described transactions.

33. Subsequent to the October 25, 1977 meeting, Urich submitted the information required by Mercedes-Benz. Mercedes-Benz investigated Urich's qualification, and, by a letter dated January 18, 1978, approved Urich for the purchase of 50 percent of the outstanding shares of Pollard-Wittman-Robb.

34. In December 1977, Urich discovered that the operating reports of Pollard-Wittman-Robb inaccurately depicted the true financial condition of Pollard-Wittman-Robb. Partly as a result of this, and the fact that Wittman failed to deliver Robb's shares to Urich as required by their October 11, 1977 agreement, a "First Amendment to Agreement of Sale" was executed by Urich and Wittman on January 31, 1978. Among other things, the Amendment gave Urich the right to financial control of Pollard-Wittman-Robb.

35. The escrow established for purchase by Wittman of Robb's shares of stock closed on March 9, 1978. Mercedes-Benz was aware of this no later than June 5, 1978. Wittman had been unable to raise all the funds necessary to buy out Robb, so Urich loaned Wittman an additional \$150,000 to enable Wittman to perform under his agreement with Urich. Even though Wittman in March 1978 had (with Urich's assistance) consummated the buy out of Robb, and Urich had been approved by Mercedes-Benz, it was not possible to transfer the stock to Urich as approval had not yet been forthcoming from Chevrolet.

36. Mercedes-Benz was aware that Urich had advanced money to Wittman to purchase Robb's stock as of March 15, 1978.

37. Mercedes-Benz made repeated inquiries of Wittman as to the status of the ownership of Pollard-Wittman-Robb, and the various buy out attempts, over a period of months but could get no satisfactory information from him.

38. One of the reasons for inquiry by Mercedes-Benz was that Pollard-Wittman-Robb's franchise had by its terms expired on December 31, 1977, but Pollard-Wittman-Robb continued to operate as a Mercedes-Benz dealer pending execution of a new franchise reflecting the contemplated change in owner-ship.

39. In July of 1978, Mercedes-Benz obtained an executed Dealer Agreement effective retroactively from January 1, 1978, through December 31, 1979. This 1978-1979 agreement showed Wittman and Robb each still owning 50 percent of Pollard-Wittman-Robb. An Addendum attached to the Mercedes-Benz 1978-1979 agreement was a General Motors form showing Wittman as 100 percent owner of Pollard-Wittman-Robb and signed by Wittman on July 7, 1978. Mercedes-Benz made no inquiry of Urich or Wittman as to these discrepancies even though Mercedes-Benz knew Wittman had purchased Robb's shares with the aid of Urich's money. Mercedes-Benz had received Robb's resignation, dated February 1978, and a copy of a letter, dated May 11, 1978, from Southern Counties Escrow stating the Wittman-Robb escrow had closed March 9, 1978. These two latter documents were obtained from Wittman on June 5, 1978 by the same Mercedes-Benz representative who obtained Wittman's signature on the 1978-1979 dealer agreement in July 1978.

40. The 1978-1979 Dealer Agreement was not forwarded by the Los Angeles Zone office to Mercedes-Benz's offices in Montvale, New Jersey until October 10, 1978 despite repeated inquiry from the Montvale office.

41. In February 1978, Urich arranged for a loan for Pollard-Wittman-Robb through the Bank of America. The loan was in the amount of \$2,000,000 and was personally guaranteed by Urich. Approximately \$1,000,000 of the loan proceeds were used by Pollard-Wittman-Robb to purchase the property on which Pollard-Wittman-Robb is located and the other \$1,000,000 was infused into Pollard-Wittman-Robb.

42. From mid March 1978 to mid June 1978, the relationship between Urich and Wittman deteriorated. The April 30, 1978 Operating Report was found to have discrepancies and in June 1978, Wittman was still improperly issuing Pollard-Wittman-Robb checks to a company owned by Wittman (Aztec Industries).

43. In mid June 1978, cross demands for formal offers to buy each other out were made by Urich and Wittman. Under the terms of the Wittman-Urich agreements, the person demanding an offer to be bought out had the right to reverse the offer to buy into an offer to sell at the same terms. The original proposed buyer would be required to accept these terms thus making that person the seller. Although there is a dispute as to which party effectively demanded such offer first, Wittman submitted an offer to buy. There was no acceptance of the offer as presented nor an exercise of the right to reverse the offer.

44. Wittman's offer to purchase was in the amount of \$1,050,000, of which \$800,000 was to be paid to Urich within

60 days of execution with a promissory note for \$250,000 payable at \$50,000 per year for five years. Wittman had informed Urich that the funds for the purchase were to be obtained from GMAC. Urich inquired of GMAC and was informed it would not loan the money to Wittman.

45. As a result of the above, Urich determined that it would not be wise to just walk away from his commitments at Pollard-Wittman-Robb and rely upon being paid by Wittman. Urich, on June 30, 1978, wrote Mercedes-Benz informing it of the fact he had an opportunity to acquire all of the interest of Wittman in Pollard-Wittman-Robb and requested a meeting with Mercedes-Benz to discuss the steps necessary for such approval. The letter identified Urich as "Secretary".

46. Mercedes-Benz, through their Los Angeles Zone office, responded with a letter of July 12, 1978 requesting information as to when Urich was appointed Secretary of Pollard-Wittman-Robb and the current status of the ownership of the shares.

47. On August 15, 1978, Wittman responded with the information that Urich had been appointed Secretary on March 17, 1978, and that the shares were held as follows:

<u>Cert. No.</u>	<u>Owner of Record</u>	<u>Beneficial Owner</u>	<u>Party in Possession</u>	<u>No. of Shares</u>
6	R. Paul Robb	Jack R. Urich	Southern Counties Escrow	750
12	R. Paul Robb, Inc.	Jack R. Urich	Southern Counties Escrow	750
5	C. J. Wittman	C. J. Wittman	Jack R. Urich	750
7	C. J. Wittman	C. J. Wittman	Jack R. Urich	750

(The Robb shares were in escrow pending close of the sale by Wittman of those shares to Urich which sale Mercedes-Benz had approved. Wittman's shares were still owned by Wittman, but had been hypothecated to Urich and were being held by Urich as security for the advances made to Pollard-Wittman-Robb, Wittman and Robb. The August 15, 1978 letter from Wittman did not explain this.)

48. On August 29, 1978, Mercedes-Benz wrote from its New Jersey offices requesting a clarification of the information contained in Wittman's August 15, 1978 letter. This letter questioned the qualifications of Urich to manage a dealership and the reasons for Urich possessing Wittman's stock.

49. On September 1, 1978, Urich met with the Mercedes-Benz Los Angeles Zone personnel and explained the status of the stock. Urich also on September 7, 1978, wrote an explanation and outlined his qualifications to Mercedes-Benz.

50. Urich had attempted to meet with the Los Angeles Zone Mercedes-Benz personnel prior to September 1, 1978 to explain the situation, but Mercedes-Benz did not respond to his attempts because they felt Urich was not their dealer.

51. On August 10, 1978, a negotiated contract (as compared to use of the power to reverse a demanded offer to buy) was entered into by Urich and Wittman in which Wittman agreed to sell to Urich.

52. The September 1, 1978 meeting with Urich and the Mercedes-Benz Los Angeles Zone personnel, left Urich believing

that Mercedes-Benz would approve his request as they had approved his request for fifty percent ownership as a result of the November 1977 meeting.

53. Since September 1, 1978 Urich has been acting in the capacity of Dealer/Operator and General Manager of Pollard-Wittman-Robb without the approval of Mercedes-Benz.

54. After the meeting at the Los Angeles Zone Office, Urich, on September 1, 1978, paid Wittman the balance of the price for Wittman's shares.

55. The present status of the shares of Pollard-Wittman-Robb is as follows:

The stock formerly owned by Robb is still in escrow at Southern Counties Escrow.

The stock formerly owned by Wittman is still in his name but in possession of Urich.

56. For tax purposes, upon resolution of the conflict with the franchisors, the stock is to be placed in the name of UCO Motor Company (a corporation formerly known as UCO Refining, but not be confused with UCO Oil Company). UCO Motor Company is wholly owned by Urich. Urich as an individual is not a share holder of Pollard-Wittman-Robb. The funds Urich used for advances to and ultimate purchase of Pollard-Wittman-Robb were those of UCO Motor Company.

57. On October 2, 1978, Mercedes-Benz informed Pollard-Wittman-Robb that it was in violation of the terms of the Dealer

agreement and that if Pollard-Wittman-Robb were to continue as a Mercedes-Benz dealer, additional information must be provided. The letter also stated that Mercedes-Benz had been attempting since 1976 to determine the ownership of the franchise.

58. A detailed reply with supporting documents was forwarded to Mercedes-Benz by Urich on October 10, 1978, concluding with a request to meet with Mercedes-Benz representatives in New Jersey. The response of Mercedes-Benz was a Notice of Termination, dated November 1, 1978. Mercedes-Benz refused all further attempts by Urich to meet and discuss the situation.

Facts Relating to Whether Mercedes-Benz of North America was Unreasonable in Withholding Approval of Urich as 100 Percent Owner of Pollard-Wittman-Robb

59. On January 18, 1978, Mercedes-Benz had approved the acquisition by Urich of 50 percent ownership of Pollard-Wittman-Robb.

60. Mercedes-Benz was aware Urich had some financial commitment in Pollard-Wittman-Robb and that since at least January 1978, Urich had been overseeing the operation of Pollard-Wittman-Robb.

61. Both Mercedes-Benz and Urich were misled by the inaccurate financial statements submitted in behalf of Pollard-Wittman-Robb.

62. The Mercedes-Benz Los Angeles Zone Manager did not evaluate Urich after Urich was granted approval for 50 percent ownership, but within 15 minutes after meeting with Urich on September 1, 1978, formed an opinion that Urich should not be approved for 100 percent ownership, but saw no reason to inform Urich of that and said nothing to Urich. Even up to the time of hearing of this matter, the Zone Manager had not reviewed Urich's qualifications to operate a Mercedes-Benz dealership.

63. Regardless of the extent of Urich's qualifications, the Mercedes-Benz Los Angeles Zone Manager would not have been influenced in any way to approve Urich's request, even though in the September 1, 1978 meeting he requested Urich submit information as to "his [Urich's] personal management experience so that it would enable us [Mercedes-Benz] to review the qualifications concerning his abilities and on that point only would we be able to make a value judgement". The memo of the September 1, 1978 meeting prepared that same day concludes: "The meeting was kept low-key. During this discussion, I did not attempt to debate Mr. Urich on his qualifications. I felt that it would be better for him to comply with our original requests, for which we have been waiting approximately eight months. It is my opinion, further reinforced by today's discussions, that I probably will not recommend Mr. Urich as a viable candidate for the Mercedes-Benz franchise as a 100 percent owner and an active manager. This judgement is being made purely and simply on an abject (sic) basis

because over the past eight months with the monies that Mr. Urich has invested in this dealership, he has had several people in this operation acting as his watchdog and so-called manager. This would indicate to me that with all his other enterprises, this will become one among many and regardless of what he says, he will not be the operator".

64. One of the factors allegedly used by Mercedes-Benz in reaching its decision to deny approval of transfer of Wittman's shares to Urich was adverse publicity pertaining to Urich's attempts to purchase an interest in the Tropicana Hotel in Las Vegas. The approval of Urich for a 50 percent interest was granted prior to such adverse publicity. The publicity of which Mercedes-Benz was aware (and the only information it relied upon in this regard) were newspaper articles appearing in the Los Angeles Times on February 16, 1978, March 5, 1979, March 24, 1978, May 26, 1978, September 29, 1978 and October 9, 1978.

65. Despite the fact Mercedes-Benz had knowledge of such publicity and claimed to have no knowledge of the status of Urich's investment in Pollard-Wittman-Robb, Mercedes-Benz made no contact with Urich, no inquiry (prior to sending the Notice of Termination) of the truth behind the articles or the facts on which they were based, and did not attempt to withdraw their approval of their consent for Urich to be a 50 percent shareholder.

66. Urich's earned academic degrees are as follows:

B.B.A. Bachelors - Business Administration - Woodbury University

M.B.A. Masters - Business Administration - California-Western
University

D.B.A. Doctor - Business Administration - California-Western
University

Ph.D. Doctor of Philosophy - Business Administration -
California-Western University

67. Urich also has an honorary L.L.D. (Doctor of Laws)
from Woodbury University.

68. Urich has served or is serving on the Boards of
Trustees of Whittier College and Woodbury University and is on
the Advisory Council for California-Western University.

69. Urich's father is the owner of Urich Motor Company,
a Lincoln-Mercury dealership in Whittier. Urich grew up with
the dealership and worked in the parts and service departments
while in high school.

70. After four years in the Navy, Urich returned and
worked at Urich Motor Company as Sales Manager and had budgeting
control and responsibility for maintaining good relationships
with the banks. While at Urich Motor Company he instituted
its first Financing and Insurance Department and ran it
successfully.

71. Urich has attended Ford Dealer Training schools
in Detroit and most Management Training Programs offered by
Ford.

72. Urich has been approved by Ford to be the successor to the Lincoln-Mercury franchise held by his father.

73. Urich founded a realty company called Urich Realty, Inc. Within six years the company went from one salesperson (Urich) and one office to ten offices and over 100 salespersons. Part of its success was due to the fact that Urich had instituted a guaranteed trade-in program for persons desiring to buy a house but concerned about selling their present house.

74. Urich left the real estate venture as the Bank of America wanted him to take over the operation of the family owned Urich Oil Company (now UCO Oil, Inc.) due to the concern over the age and health of Urich's father. During Urich's tenure of over ten years as president of UCO Oil the company's annual sales grew from less than \$20,000,000 per year to over \$250,000,000 per year.

75. Since Urich assumed management control of Pollard-Wittman-Robb, Pollard-Wittman-Robb is no longer out of trust, there is an adequate working capital and the amounts being reported to Mercedes-Benz and Chevrolet are accurate.

76. Since assuming control, Urich has been spending a minimum of five days per week and six to nine hours per day at Pollard-Wittman-Robb.

77. Urich has also authorized substantial expenditures for tools and equipment (most of which were acquired prior to Mercedes-Benz's Notice of Termination) as well as instituting

substantial improvements to the facilities. Mercedes-Benz has been kept informed of these improvements.

Facts Pertaining to Whether it Would Be Injurious to the Public Welfare for the Franchise to be Terminated

78. There is presently and has been for some time a greater demand for Mercedes-Benz vehicles than an available supply and the existing dealers are on a strict rationing/ allocation system.

79. There is a need for a Mercedes-Benz dealership in the Van Nuys area and Mercedes-Benz plans to replace the franchise in the immediate vicinity if Pollard-Wittman-Robb is terminated.

80. A Mercedes-Benz dealer in Camarillo, Ventura County terminated two or three years ago. Even though Mercedes-Benz intended and still intends to do so, it has not replaced the dealership due to the scarcity of Mercedes-Benz vehicles (despite the existence of a new facility and willing and qualified applicants with financial ability and experience).

81. There are at present fifteen or sixteen Mercedes-Benz dealers in the Los Angeles metropolitan area.

82. There has been only one Mercedes-Benz dealer added in the Los Angeles Zone in the last three years. This was in El Cajon, San Diego County.

Facts Pertaining to the Extent of the
Franchisee's Failure to Comply with the
Terms of the Franchise

83. The Mercedes-Benz dealer agreement is a personal service contract.

84. The agreement provides as causes for termination, "Any transfer or assignment or attempted transfer or assignment of the Agreement or any part thereof or interest therein by the Dealer without the prior written consent of MBNA;" or "Any change, whether voluntary or by operation of law, in the ownership of or in the active management of the Dealer ... without the prior consent of MBNA."

85. The terms of the franchise which were allegedly violated and which form the basis for the decision of Mercedes-Benz to terminate Pollard-Wittman-Robb, give rise to the same issues as stated in Issues I (Transfer without prior approval) and II (Reasonableness of withholding approval) herein and thus the issue of non-compliance with the terms of the franchise and the effect thereof, are resolved through application of the same findings of fact as to Issues I and II.

86. In addition to the incorporation herein of the previous findings, it is also found that both Mercedes-Benz and Urich were misled by the franchisees who were in dire financial trouble. Both Mercedes-Benz and Urich, in good faith, but perhaps in bad judgement, attempted to give the benefit of the doubt to

the franchisees. In so doing, Mercedes Benz and Urich relied upon the very source of their problems to be the channel of communication to resolve their problems. This ultimately led to a most unsatisfactory situation for both Mercedes-Benz and Urich resulting in the notice of termination and this protest.

87. The failure to comply with the terms of the franchise was primarily the failure of Wittman and Robb, not Urich, who had only recently been approved as a 50 percent owner.

88. Although Urich acted prematurely in committing himself, his application for 50 percent ownership was in fact approved, and his subsequent conduct resulting in his request for 100 percent ownership was dictated by necessity rather than subterfuge.

DETERMINATION OF ISSUES

1. Respondent has failed to establish good cause exists for termination of the franchise for the following reasons:

(a) Even though there had been a change in the ownership and management of Pollard-Wittman-Robb without the prior written approval of Mercedes-Benz (Paragraph 1), such approval was unreasonably withheld (Paragraph 2);

(b) Termination of the franchise would be injurious to the public welfare;

(c) The failure to comply with the terms of the franchise, is, under the unique circumstances of this case, not

attributable solely to Urich.. Enforcement of this provision will unjustly and adversely affect Pollard-Wittman-Robb, whereas if Pollard-Wittman-Robb is allowed to continue as a Mercedes-Benz dealer, Mercedes-Benz will, in all likelihood, not be harmed, but will benefit from the relationship as will the consuming public.

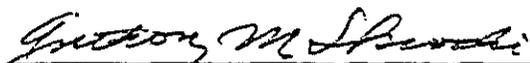
* * * * *

The following proposed decision is respectfully submitted:

The protest is sustained. Respondent is not permitted to terminate the franchise of protestant.

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 Los Angeles, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: April 27, 1979



ANTHONY M. SKROCKI
Hearing Officer
New Motor Vehicle Board