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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

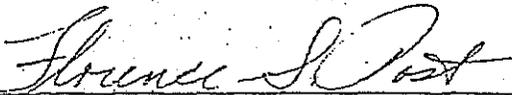
In the Matter of the Protest of)
SOUTHLAND CYCLE CENTER, INC.,) Protest No. PR-239-79
Protestant,)
vs.)
U. S. SUZUKI MOTOR CORPORATION,)
Respondent.)

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 25th day of September, 1979.


FLORENCE S. POST
President
New Motor Vehicle Board

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Respondent)

PROPOSED DECISION

Procedural Background

1. On May 10, 1979, pursuant to section 3062 of the Vehicle Code,^{1/} U. S. Suzuki Motor Corporation (Suzuki) gave notice of its intention to approve a relocation of the existing dealership of House of Suzuki, presently located at 16112 Harbor Boulevard, Fountain Valley, California, to 9282 Balsa Avenue, Westminster, California.
2. A protest opposing such relocation was filed on May 18, 1979, by Southland Cycle Center, Inc., (Southland) 8141 Garden Grove Boulevard, Garden Grove, California. Southland filed an amended protest on July 18, 1979.

1. Unless otherwise indicated, all references are to the California Vehicle Code.

3. A hearing on this protest was held, pursuant to section 3066, before Sam W. Jennings, Hearing Officer of the Board, commencing on July 10, 1979, and concluding on July 24, 1979. The protestant was represented by Frank Nicholas, 1300 Dove Street, Penthouse Suite, Newport Beach, California 92660. Respondent, Suzuki, did not appear at the hearing.

4. The proposed relocating dealer, House of Suzuki, requested and was granted a right to appear and testify as an interested individual pursuant to section 3066. House of Suzuki was represented by Scott L. Johnson, 535 North Brand Boulevard, Suite 850, Glendale, California 91203.

5. Pursuant to section 3066, the protestant " . . . has the burden of proof to establish there is good cause not to enter into a franchise . . ." to relocate a motor vehicle dealership.

6. Southland contends that good cause exists for not relocating House of Suzuki to the proposed location for the following reasons:

(a) The relocation will jeopardize the permanent investment of the protestant (section 3063(1));

(b) House of Suzuki does not have any permanency of investment (section 3063(1));

(c) The relocation will have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area (section 3063(2));

(d) The relocation will be injurious to the public welfare (section 3063(3));

(e) Southland is providing adequate competition and convenient consumer care (section 3063(4));

(f) The relocation would not increase competition and would, therefore, not be in the public interest (section 3063(5)).

FINDINGS OF FACT

Facts Relating to Permanency of Investment

7. Robert D. Johnson is the 100 percent owner of Southland, having purchased it three years and ten months ago. Southland had been in existence for approximately eight years prior to Mr. Robert D. Johnson's purchase of the corporation.

8. Southland has been at its present location for approximately 12 years.

9. Robert D. Johnson owns both the real property (one-third of an acre) and the structure (approximately 3,000 square feet) housing Southland.

10. When purchased in December, 1976, Robert D. Johnson paid \$110,000 for Southland. The value of the property and the structure housing Southland has increased significantly since its purchase by Mr. Robert D. Johnson.

11. Southland is a single line dealer.

12. The relocation of the House of Suzuki to the proposed new location would have a detrimental effect on the profits of Southland and hinder its ability to modernize its present facility

as well as retain qualified personnel and maintain training programs and special machinery for servicing Suzuki motorcycles.

Facts Relating to the Effect on the
Retail Motor Vehicle Business and the
Consuming Public in the Relevant Market Area

13. The Los Alamitos Naval Air Station is located approximately two and one-half miles west of Southland which is in an area of relatively low population density.

14. The existing location of House of Suzuki is approximately 9.2 miles by surface street from Southland and the distance may be traveled in approximately 20 to 25 minutes. The straight line distance from the existing House of Suzuki to Southland is approximately seven to seven and one-half miles.

15. The distance by surface street between Southland and the proposed new location of House of Suzuki is approximately three miles and could be traveled in five to seven minutes. The straight line distance between Southland and the proposed new location of House of Suzuki is approximately two and one-half miles.

16. Fifty-four percent of the retail sales of Southland are in the Garden Grove, Westminster, and Huntington Beach area. The proposed new location of House of Suzuki is centrally located in this sales area.

17. The existing location of House of Suzuki is centrally located among the areas of Santa Ana, Fountain Valley, and the eastern portion of Westminster.

18. If House of Suzuki is permitted to move to the new location, it would be moving away from the market and service areas of Santa Ana and portions of Fountain Valley. These are areas from which it draws most of its customers.

Facts Relating to Adequacy of Competition
and Convenient Consumer Care

19. Southland employs two full-time service personnel and another half time. The service manager has eight years of experience in the motorcycle business and has attended all of the Suzuki technical schools.

20. Southland has substantially increased its inventory of parts and accessories and has special tools and testing equipment to work on Suzuki motorcycles. At the present time, Southland maintains a parts inventory valued at approximately \$35,000.

21. The time Southland requires to complete most routine repair and service of motorcycles is between eight and twenty-four hours and most major repairs are completed within one week. Southland has most needed parts in stock. If additional parts are needed from Suzuki they may be obtained from the Suzuki supply plant which is approximately 30 minutes from Southland.

22. House of Suzuki has relocated its sales facilities for Triumph Motorcycles and its parts and service facilities for both Triumph and Suzuki motorcycles to the proposed new location.

Findings of Fact Relating to Circumstances
Associated With House of Suzuki's Decision to Relocate

23. House of Suzuki is owned and operated by Mr. David W. Burroughs and has been in business for approximately 15 years at its present location. House of Suzuki is a dual line motorcycle dealer, selling Suzuki as well as Triumphs.

24. House of Suzuki decided to move as a result of the sale of its old facilities. While a move from the old facilities was suggested by Suzuki, the relocation was decided upon without benefit of any market study or specific direction on the part of Suzuki.

25. House of Suzuki had entered into a contract for sale of the property at the old location before it located the new proposed facilities.

26. House of Suzuki made no written application to Suzuki for relocation. David W. Burroughs simply telephoned the district manager, Marty Haynes, and told him that House of Suzuki must move as a result of the sale of its present facilities. Marty Haynes looked at the proposed property which was subsequently approved by Suzuki.

27. On June 1, 1979, House of Suzuki entered into a lease of the new facilities^{2/} for a period of five years with an option to renew for another five years.

House of Suzuki made approximately \$10,000 worth of capital improvements on the new lease facilities.

28. House of Suzuki's new location has large lettering in its windows which reads "New Home of House of Suzuki", as well as other signs designating it as a Suzuki dealership.

Determination of Issues

1. Southland has established that good cause exists for not relocating House of Suzuki to the proposed location for the following reasons:

(a) The proposed relocation of House of Suzuki will reduce Southland's earnings and earning capacity and will require that costs be cut thereby reducing service, and having an adverse effect on the consuming public within the relevant market area.

(b) If allowed to relocate, House of Suzuki will be moving away from its primary market area to the detriment of its retail sales and service customers. Such a move is not in the public interest.

2. The lease was executed after receiving approval from Suzuki for the relocation.

(c) Southland is providing adequate competition and convenient consumer care in its primary market area, including the area of the proposed new location of House of Suzuki.

(d) The relocation of House of Suzuki is not in the public interest.

2. Pursuant to section 589 of the Board's regulations,^{3/} the failure of Suzuki to appear at the hearing is hereby interpreted as an abandonment of Suzuki's interest in the relocation of the House of Suzuki to the intended new location.

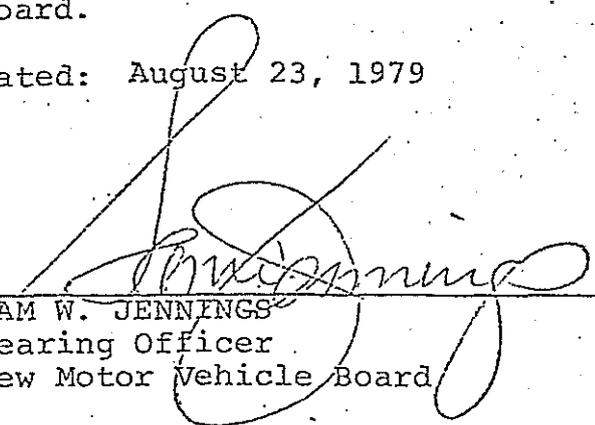
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The following proposed decision is respectfully submitted:

The protest is sustained. The respondent is not entitled to relocate House of Suzuki to the proposed new location.

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 Santa Ana, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: August 23, 1979



SAM W. JENNINGS
Hearing Officer
New Motor Vehicle Board

3. Title 13, Chapter 1, Subchapter 2, Article 5, California Administrative Code.