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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of	)	
THUR IMPORTS, INC.,	)	Protest No. PR-257-79
Protestant,	)	
vs.	)	
FIAT MOTORS OF NORTH AMERICA,	)	
INC.,	)	
Respondent.	)	

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DECISION

The attached Proposed Decision of the Administrative Law Judge 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 22 day of January, 1980.

  
FLORENCE S. POST  
President  
New Motor Vehicle Board

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PROPOSED DECISION

Procedural Background

1. Respondent, Fiat Motors of North America, Inc., (Fiat) gave notice pursuant to section 3062 of the Vehicle Code<sup>1/</sup> by letter dated November 29, 1979, that it intended to relocate Frank White Imports (a Fiat franchisee) from 1407 W. Holt Avenue, Pomona, California, to 800 Indian Hills Boulevard, Claremont, California.

2. The Protestant, Thur Imports, Inc., (Thur) filed a protest on December 4, 1979, and amended protest on December 26, 1979, with the New Motor Vehicle Board, requesting a hearing.

3. A hearing was held pursuant to section 3066 before Sam W. Jennings, Executive Secretary of the Board and Administrative Law Judge, commencing on January 3, 1980, in Sacramento, California.

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

Thur was represented by Kenneth J. Murphy, Esq., of the law firm of Herlihy, Herlihy and Murphy of Los Angeles, California. Fiat was represented by Jareh Peterson, Esq., of the law firm of Graham and James of San Francisco, California.

4. Frank White Imports (White), a Fiat franchisee, appeared as an "interested individual" pursuant to Vehicle Code section 3066. White was represented by Sidney I. Pilot, Esq., of the law firm of Sidney I. Pilot, A Professional Corporation, of Los Angeles, California.

#### Issues Presented

5. Thur contends that good cause exists for not relocating White to the proposed new location for the following reasons:

- a) The relocation of White would jeopardize the permanent investment of Thur (§3063(1));
- b) Such a relocation will have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area (§3063(2));
- c) The franchisees of the same line-make in that relevant market area are providing adequate competition and convenient consumer care (§3063(4));
- d) Such a relocation is a violation of the franchise agreement which prohibits a competing franchise from being located within five miles of an existing Fiat franchisee.

FINDINGS OF FACT

Facts Relating to the Permanency of Investment (§3063(1))

6. Thur is located at 400 West Holt Boulevard, Ontario, California, and has been at that location approximately eight years.

7. At the time Thur came into existence, Frank White Imports was in operation at its present location.

8. It takes approximately 14 minutes and 50 seconds to travel the 7 mile distance from White to Thur Imports. The distance between Thur and the site of White's proposed new location is approximately 5.4 miles and can be driven in approximately 12 minutes and 35 seconds.

9. Gary Sherman is the 100% owner of Frank White Imports, a corporation, and has owned the dealership since 1976.

10. White has negotiated a lease for the proposed new site. The annual lease payment is \$25,000. The lease is strictly a ground lease.

11. The total proposed investment by White in the new facilities will be \$545,840.00.

12. John Thur is the president of Thur and all stock of the corporation is held by John Thur and his wife.

13. Thur leases its facilities. The lease has been renewed on two different occasions; the last renewal was executed during August of 1978. The duration of the renewed lease is five years with a five year option.

14. Thur's current rental obligation under its lease is approximately \$2,400 per month.

15. Thur had no knowledge of how many new motor vehicle sales, if any, would be lost as a result of the relocation of White.

Facts Relating to the Effect on the  
Retail Motor Vehicle Business and the  
Consuming Public in the Relevant Market Area(\$3063(2))

16. Pomona, the area in which White is located, is a depressed area and has a higher than normal crime rate.

17. The existing facilities of White, on Bolt Boulevard, is in an area of high vandalism and crime rate.

18. White has had to take a number of precautions as a result of the high crime rate. In June or July of 1977, upon the threat of losing its insurance, White was forced to put up a chain link fence, 8 foot high and 3 strands of barbed wire around the sales facility.

19. The new location will be much safer for both customers and employees of White.

20. The current facilities of White are at full capacity and do not have the potential for future growth.

21. The proposed new facility is considerably larger than White's present location.

22. The proposed new location of White offers considerably greater parts and service capability to the public and an opportunity to have a better selection of new and used vehicles.

23. The effect of a new improved Fiat dealership on a major freeway with highly visible signs will be beneficial both to the new relocating dealer and to Thur Imports.

Facts Relating to Adequacy of Competition  
and Convenient Consumer Care (§3063(4))

24. The proposed new facilities will have freeway access and the fact that the proposed Fiat store would be close to a major shopping center was a significant consideration in allowing the relocation of White.

25. Such a freeway location would make it more convenient for sales, service, and parts customers to get to the dealership.

26. The traffic count on the San Bernadino freeway which is near the proposed new location is 125,000.

27. The service area of the proposed new site of White will be approximately 175 feet by 71 feet and include initially 16 service stalls with the ability to expand to 24.

28. Thur's facilities are located within one building with a 90 foot showroom and approximately 7,900 square feet of shop area.

29. Thur has five service stalls available; however, their operation is dependent upon the number of mechanics who show up for work.

30. For the fiscal year ending August 31, 1979, Thur wrote 2,588 customer repair orders and 568 warranty repair orders. For the fiscal year ending August 31, 1978, Thur wrote 2,613 customer repair orders and 597 factory repair orders.

31. Thur sold 151 new cars during fiscal year 1979 ending August 31, 1979. Thur sold 130 new cars the fiscal year ending August 31, 1978.

32. During the two year period preceding the filing of the protest, Fiat has not expressed any dissatisfaction with Thur's sales or service within its general marketing area.

33. Fiat has no derogatory information on either Thur or White; nor has Fiat requested either dealer to expand its sales or service facilities.

34. Fiat has no present plans to add any dealers in the general area of Thur and White.

Facts Relating to the Franchise Agreement

35. White is a dual-line dealer, having both a Fiat and a Volvo franchise. The Fiat franchise provides in part that in any area which has been designated as a "multipoint franchise market", Fiat will not enter into a Fiat Dealer Sales and Service Agreement with another dealer approving a salesroom within a radius of 3 miles of normal direct driving distance from the existing dealer's approved salesroom, and in other areas within 5 miles thereof.

36. The franchise agreement between Thur and Fiat provides that the Thur point is not designated as a multipoint franchise market.

37. Since the execution of the franchise agreement between Thur and Fiat, Fiat has changed the market designation of Thur to be a multipoint franchise market.

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DETERMINATION OF ISSUES

1. Thur has not sustained its burden of proof.
2. Thur has failed to establish that there is good cause for not relocating White to the proposed new location for the following reasons:

- (a) White will have a substantial permanent investment in the new proposed facilities; Thur's investment will not be jeopardized by the relocation of White.
- (b) Thur has failed to show that the relocation of White will have a detrimental effect on the retail motor vehicle business and the consuming public in the relevant market area.
- (c) The proposed new location of White will provide much improved convenient consumer care. The relocation of White to the proposed location will provide a safer working atmosphere for the employees and provide easy access and safety to the consuming public.
- (d) The relocation of White is not in violation of the franchise agreement which prohibits a competing franchise from being located within 5 miles of an existing Fiat franchise.

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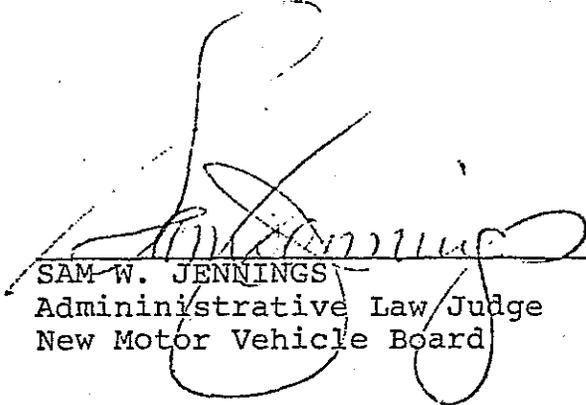
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Wherefore the following order is hereby made:

The protest is denied.

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 22, 1980.



SAM W. JENNINGS  
Administrative Law Judge  
New Motor Vehicle Board