

2415 First Avenue
P. O. Box 31
Sacramento, CA 95801
(916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

| | | |
|----------------------------------|---|-------------------------|
| In the Matter of the Protest of |) | |
| ALEXANDER MATZKIN, also known as |) | |
| AL MATZKIN, and HAYWARD MOTORS, |) | |
| a California Corporation, |) | |
| |) | |
| Petitioners, |) | Protest No. PR-32-75--- |
| |) | |
| vs. |) | FILED: July 16, 1975 |
| |) | |
| FORD MOTOR COMPANY, a Delaware |) | |
| Corporation, |) | |
| |) | |
| Respondent. |) | |

DECISION

On or about April 3, 1975, FORD MOTOR COMPANY ("Franchisor") notified HAYWARD MOTORS ("franchisee") that the latter's franchise with Ford Motor Company is terminated effective 60 days from receipt of said notice of termination.

On April 8, 1975, FORD MOTOR COMPANY notified HAYWARD MOTORS that the latter's franchise with Ford Motor Company was terminated because of insolvency, that the April 8th notice superseded the prior notice dated April 3, 1975, and that said termination would become effective within 15 days after receipt of said notice.

Hayward Motors thereafter filed a protest pursuant to the provisions of Vehicle Code Section 3060^{1/}, and, in accordance with

^{1/} All references, unless otherwise noted, are to the Vehicle Code.

Section 3066, this board designated a hearing officer to hear the evidence relating to the protest. Said hearing was scheduled for July 21, 22 and 23, 1975.

On May 23, 1975, Ford Motor Company filed an answer to the protest herein, and petitioned the Board for an expedited hearing based upon the following:

- 1) Hayward Motors has been out of business since January 1975.
- 2) Elmhurst Ford in Oakland, California, a nearby Ford dealership, had previously closed and remained closed.
- 3) The combined annual sales volume of these dealerships is in excess of 4,000 vehicles.
- 4) Ford owners in the Hayward area have been put to great inconvenience in obtaining warranty and other service on their vehicles.

The board, in considering the petition for an expedited hearing, requested the Department of Motor Vehicles to undertake an investigation and render a report to this board on the following issues:

- 1) Is Hayward Motors in a state of insolvency and has a petition under the bankruptcy laws of this country or ~~similar action under the laws of the State of California~~ been filed by or against Hayward Motors?
- 2) Is Hayward Motors presently open and doing business and properly licensed to sell automobiles? If not so licensed or open for business, the date on which it ceased doing business and surrendered its license to the department.

On May 28, 1975, the department responded to the board's request and reported that Hayward Motors had voluntarily terminated business effective February 24, 1975, and surrendered its dealer's license and supplies; that no evidence of filing of bankruptcy had been located with the Federal referee in Alameda County; and that it would appear that the company is insolvent, in that the Department of Motor Vehicles is holding a dishonored check in the amount of \$10,864 and is to proceed against the Surety Bond, and Ford Motors Acceptance Corporation has reportedly tied up the dealer's contingency reserve of approximately \$25,000.

Based upon the foregoing and upon a number of requests from the community of Hayward, creditors and employees of Hayward Motors, the board granted the petition for an expedited hearing and ordered the parties to appear before the board on June 11, 1975, and stated that the issues to be considered at said hearing will be:

- 1) Is Hayward Motors insolvent?
- 2) Is Hayward Motors presently doing business or has it surrendered its dealer's license and supplies to the Department of Motor Vehicles?

At its meeting of June 11, 1975, the board heard oral argument by the parties. ~~It was confirmed that Hayward Motors had ceased~~ operation and had surrendered its special DMV plates and supplies to the Department of Motor Vehicles on or about February 27, 1975, and the board was informed that:

- 1) Approximately 100 to 120 employees were out of work as a result of such a closure.
- 2) The customers who had normally depended upon the service and warranty work at Hayward Motors were inconvenienced.
- 3) Correspondence from members of the community expressed their desire to this board that there be an expedited determination of the issues involved in the Hayward Motors protest so that the dealership may once again become an active point in the community of Hayward.

Based upon the above and upon other information brought to the board's attention, the board ordered the parties to appear before the board at a special hearing on June 23, 1975. The board also ordered the parties to submit specified documents and material within certain dates and times so that the board may have same for consideration before the hearing.

On June 23, 1975, this board heard the protest of Hayward Motors versus Ford Motor Company.

The protestant franchisee was present and was represented by Abraham Hochler of the law firm of Hochler and Frost.

The franchisor was represented by F. Bruce Kulp, its attorney.

~~Oral and documentary evidence was received, and the hearing~~ was closed. The record was held open to permit the filing of briefs by both parties. Said briefs were received and were made a part of the record, respectively, as Franchisor's Exhibit No. "C" and Franchisee's Exhibit No. 10, whereupon the record was closed and

the matter was submitted.

The New Motor Vehicle Board makes the following decision:

FINDINGS OF FACT

I

Beginning in 1974, and at all times material herein, the protestant franchisee, a California corporation, was franchised by Ford Motor Company, a corporation, for the sale of Ford automobiles in a market area roughly delineated, for the purposes of these proceedings, as the City of Hayward, California. Alexander Matzkin, at all times material herein, was and is president and sole stockholder of Hayward Motors.

II

On February 5, 1974, the existing Ford Sales and Service Agreement (franchise) was transferred from Hayward Motors, a partnership consisting of Arthur J. Brabant and Alexander Matzkin, to franchisee (Hayward Motors), a California corporation, with Alexander Matzkin the sole stockholder thereof.

III

On February 24, 1975, franchisee (Hayward Motors) voluntarily ~~terminated business and surrendered its dealer's license and~~ supplies to the Department of Motor Vehicles.

IV

On April 3, 1975, Ford Motor Company notified franchisee (Hayward Motors) that the latter's franchise with Ford Motor Company

is terminated effective sixty days from said notice of termination. On April 8, 1975, Ford Motor Company notified franchisee that the latter's franchise with Ford Motor Company was terminated because of insolvency, that the April 8th notice superseded the prior notice dated April 3, 1975.

V

On April 21, 1975, there was filed with the New Motor Vehicle Board of the State of California a protest pursuant to Article 4 (beginning with Section 3060) of Chapter 6, Division 2 of the Vehicle Code, protesting the termination of the franchise. Said protest was transmitted to the board's office via a telegram. On May 6, 1975, an amended protest was filed with the board.

VI

California Commercial Code, §1201 (23) defines insolvency as follows: "A person is 'insolvent' who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the Federal Bankruptcy Act."^{2/}

2/ The Federal Bankruptcy Act defines "insolvency" as follows:
"A person shall be insolvent within the provisions of this title whenever the aggregate of his property, exclusive of property which he may have conveyed, transferred, or concealed, or removed with the intent to defraud, hinder, or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts." 11 U.S.C.A. §1(19)

VII

The accounting principles and procedures employed by Ford Motor Credit Company in arriving at Hayward Motors' adjusted balance sheet dated January 31, 1975 ^{3/} are recognized and acceptable.

VIII

Hayward Motors did not have sufficient current assets to meet current liabilities in that its balance sheet on January 31, 1975 shows current assets totalled \$3,146,103 and current liabilities totalled \$3,449,742, thereby reflecting Hayward Motors' inability to pay current liabilities in the amount of \$303,639.

IX

The asset of "factory receivables", in the amount of \$58,957 stated in the adjusted balance sheet of January 31, 1975, is held by Ford Motor Company and subject to an offset by same for any monies due to Ford Motor Company. Therefore, said receivable is not available to pay current liabilities.

X

Hayward Motors' adjusted balance sheet dated January 31, 1975 reflects a total net worth of a minus \$181,034, thereby indicating a lack of sufficient assets to pay its debts.

^{3/} All references to the balance sheet of January 31, 1975 are to that balance sheet prepared by Ford Motor Credit Company and received into evidence as Respondent's Exhibit "A" (R.T.51:5-13).

XI

The asset listed as "finance company receivable deferred" on the adjusted balance sheet dated January 31, 1975 in the amount of \$123,800 is subject to charge-backs for prepaid amounts and repossessions. Said amount is held by Ford Motor Credit Company and subject to the aforementioned contingent liabilities. Therefore, that amount is in excess of the true value of said asset.

XII

Ford Motor Credit Company has a secured interest in all new vehicles and a blanket security on all assets of Hayward Motors to cover the capitol loan of \$376,500.

XIII

On or about January 16, 1975, Hayward Motors was in an out-of-trust condition in the amount of approximately \$280,000 in that vehicles were sold which served as security to Ford Motor Credit Company and payments were not made to satisfy said security agreement.

DETERMINATION OF ISSUES

1. It was established by a preponderance of the evidence that Hayward Motors (Franchisee) was insolvent in that it lacked sufficient current assets to pay its debts in the ordinary course of business or as they became

due as reflected in Finding of Fact VIII.

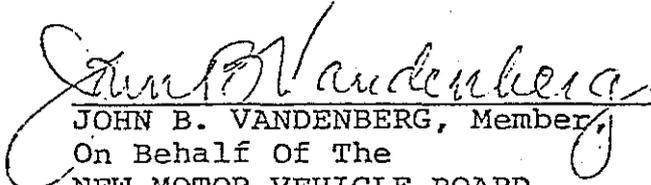
2. It was established by the preponderance of the evidence that Hayward Motors (Franchisee) was insolvent in that it lacked sufficient total assets to pay its debts as reflected in Finding of Fact X.
3. Good cause was established under the provisions of Article 4 of Chapter 6, Division 2 of the California Vehicle Code and Findings VIII, IX, X, XII, and XIII for the termination of the franchise described in Findings I and II.

ORDER

The board, therefore, enters the following order:

The protest is overruled.

DATED: July 16, 1975



JOHN B. VANDENBERG, Member
On Behalf Of The
NEW MOTOR VEHICLE BOARD

The foregoing constitutes the
decision of the NEW MOTOR
VEHICLE BOARD