

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

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

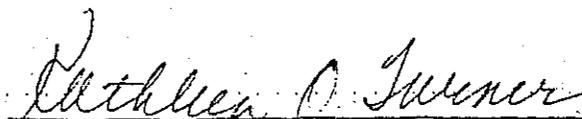
In the Matter of the Protests of	)	
RICE MOTOR CO.,	)	Protest Nos. PR-324-81
a California corporation;	)	
LE BARD AND UNDERWOOD, INC.,	)	PR-325-81
a California corporation;	)	
RICE MOTOR CO., a California	)	PR-326-81
corporation, doing business as	)	
HONDA OF WEST COVINA,	)	
Protestants,	)	
vs.	)	
AMERICAN HONDA MOTOR CO., INC.,	)	
Respondent.	)	

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 2<sup>nd</sup> day of October, 1981.



KATHLEEN O. TURNER  
President  
New Motor Vehicle Board

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	)	
Protestants,	)	
	)	
vs.	)	
	)	
AMERICAN HONDA MOTOR CO., INC.,	)	<u>PROPOSED DECISION</u>
	)	
Respondent.	)	
	)	

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Procedural Background

1. By letter dated April 2, 1981, Respondent, American Honda Motor Co., Inc., (Honda), gave notice to the Protestants of Honda's intention to establish a motorcycle franchise at 521 South Azusa Way, La Puente, California.<sup>1/</sup>

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1. Rice Motor Co. operates two Honda dealerships; one in El Monte at 10005 Garvey Street (Rice - El Monte) and the other in West Covina, at 1025 State Street (Rice - West Covina).

2. Notice was given to the New Motor Vehicle Board, (Board), on April 8, 1981, pursuant to Vehicle Code Section 3062.<sup>2/</sup>

3. Rice - El Monte, Le Bard and Underwood, Inc., (Le Bard), 321 East Imperial, La Habra, California and Rice - West Covina filed protests with the Board on April 17, 1981. George Dye Motors, Inc., (Dye), 723 E. Alostia Dr., Glendora, California filed a protest with the Board on April 20, 1981.

4. A Prehearing Conference was held before Anthony M. Skrocki, Administrative Law Judge with the Board on May 4, 1981. Honda moved to dismiss the Dye protest. The motion was taken under submission pending determination of whether Dye complied with certain Board regulations within the time limitations set out in the Board's letter of April 22, 1981.

5. Honda also moved to dismiss all protests alleging the Board lacked jurisdiction. Honda's motion was taken under submission pending receipt of declarations, and points and authorities.

6. On May 19, 1981, the Dye protest was dismissed for failure to comply with the necessary regulatory requirements set forth in Title 13, Chapter 1, Subchapter 2, article 5 and 6 (commencing with Section 583) of the California Administrative Code.

7. The Protests were ordered consolidated for hearing, and a hearing was held before Gloriette C. Fong, Administrative Law Judge of the Board, commencing on July 7, 1981 and ending on July 14, 1981.

8. Respondent, Honda, was represented by J. Donald McCarthy, and Arnold E. Sklar, Lyon & Lyon. Protestants were represented by Michael J. Flanagan of Pilot & Spar, and William S. Fazio of Christensen, Fazio, McDonnell, Briggs, Ward, and Holland.

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

## Jurisdictional Issue

9. Honda contends that the proposed dealership is to be at a location which is within one mile of a dealership that ceased operation within one year, and therefore the Board is without jurisdiction to hear the protests.

10. The proposed dealership is to be owned by a partnership or a corporation with the principals being Bernard W. Hilton, Jr., Bernard W. Hilton, III., and Denny Kakos and is to be located at 521 South Azusa Way, La Puente, California.

11. A previous Honda dealership in the area, Hacienda Heights Honda (Hacienda), was owned by Ed Coyle and was located within one mile at a different address on Azusa Way.

12. It is determined that the proposed dealership is an additional dealership and is neither the reopening of a dealership nor a relocation of an existing dealership.

## Issues Presented

13. Protestants contend that good cause exists for not establishing the proposed franchise for the following reasons:

- a. The additional franchise will jeopardize the permanent investment of the protestants in light of available inventory and other market conditions. (§3063(1))
- b. Establishing an additional motorcycle franchise will have an adverse effect on the retail motorcycle business and the consuming public in the relevant market area, considering the history of operations at the proposed new location. (§3063(2))
- c. Establishing a motorcycle franchise will be injurious to the public welfare if it is unsuccessful and if, in attempting to succeed, it adversely affects existing franchisees in the area. (§3063(3))

- d. Franchisees of the same line makeup in the relevant market area are providing adequate competition and convenient consumer care for Honda vehicles in the market area, including adequate motorcycle sales and service facilities, equipment, supply of motorcycle parts and qualified service personnel. (§3063(4))
- e. Establishment of an additional motorcycle franchise in the market area would not increase competition and therefore would not be in the public interest, but would instead cause damage to the business of the existing Honda dealers in the market area. (§3063(5))

Findings of Facts

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

Rice Motor Co.

14. Rice Motor Co. operates 2 Honda franchises, Rice - El Monte and Rice - West Covina.

15. Margaret V. Rice owns all the shares of Rice Motor Co. and is president and chief financial officer of the corporation.

16. The other officers of the corporation are Margaret V. Rice's sons, Timothy Paul Rice, vice president; and Larry Rice, secretary.

17. Rice Motor Co. owns a warehouse in El Monte. The warehouse land originally cost \$50,000. The land on which the building is located is owned by Margaret V. Rice. The warehouse facility is used to store motorcycle inventory for both Rice - El Monte and Rice - West Covina.

35. Other than the four protestants, Whittier Honda is the only other Honda dealership within the relevant market area.

36. Up until mid 1980, Hacienda was also a Honda dealership in the relevant market area located approximately one mile from the proposed location. Hacienda was sold in 1979 because it had been unprofitable. The new owner closed the business in 1980 after less than one year of operation.

37. A former Honda dealership in Duarte had been in operation in the relevant market area but ceased operation in 1975 or 1976.

38. Another Honda dealership known as Dick 'N' Walts is located less than 1/2 mile outside of the relevant market area. The dealership has not been operating at a profit and the owners are presently willing to sell the dealership for less than the current fair market value of the assets.

39. The chart below indicates the straight line and driving distances as well as the driving times between the proposed dealership and other Honda dealers within the area:

Proposed Location to Other Honda Dealerships:

	<u>Straight Line</u>	<u>Driving Distance</u>	<u>Driving Time</u>
<u>Le Bard</u>	6.4 Miles	9.5 Miles	15 Minutes
<u>Rice - El Monte</u>	7.9 Miles	10.1 Miles	14 Minutes
<u>Rice - West Covina</u>	4.0 Miles	4.6 Miles	9 Minutes
<u>Dye</u>	8.9 Miles	9.9 Miles	21 Minutes
<u>Whittier Honda</u>	6.7 Miles	8.4 Miles	12 Minutes
<u>Dick 'N' Walts</u>	10.0+ Miles	13.3 Miles	16 Minutes
<u>Buena Park Honda</u>	10.1 Miles	14.0 Miles	23 Minutes
<u>Temple City Honda</u>	10.5 Miles	17.8 Miles	25 Minutes

40. Of the existing Honda dealerships in the relevant market area, Honda believes that Rice - West Covina, Dye, and Whittier need to relocate to better facilities.

41. Over the last 5 years, Rice - West Covina has inspected at least 10 sites for possible relocation, however, all of them have been determined to be unsuitable.

42. Honda and Rice - West Covina agree that Honda's recommended goals for the service department of Rice - West Covina are not achievable at the present location. The deficiencies include the facility being too small, having a poor appearance and being in a poor location.

43. Rice - West Covina must move within 1 to 3 years as the result of the City of West Covina's redevelopment plans.

44. In the summer of 1980, when it was evident Hacienda was closing, Rice - West Covina discussed with Spencer Saito (Saito), Honda's District Sales Representative, Rice - West Covina's proposal to relocate to the Hacienda location.

45. In a follow-up phone call by Rice - West Covina, Saito advised them to put the proposal in writing.

46. In an August 3, 1980 letter addressed to Saito, Rice - West Covina explained why they felt a new Honda franchisee would be unnecessary and outlined their proposal to relocate.

47. Despite Rice - West Covina's efforts to obtain a decision from Honda, Saito would only say that the proposal was under consideration.

Rice - El Monte

18. Rice - El Monte has sold and serviced motorcycles since 1962 when Rice Motor Co. first began selling and servicing motorcycles as a single-line dealer.

19. The Rice - El Monte property includes approximately 15,000 sq. ft. with 6,000 sq. ft. of floor space. The Rice - El Monte property is owned by Margaret V. Rice.

20. The property on which the Rice - El Monte facility is located was originally purchased for \$20,000. Improvements consist of a new building which costs \$65,000.

21. Rice - El Monte has a good inventory. The motorcycle inventory at Rice - El Monte is \$300,000. The parts inventory is approximately \$35,000. (RT 570, 571)

22. The Rice - El Monte dealership has been profitable the last five years.

Rice - West Covina

23. Rice - West Covina was established in 1965. It is a single-line dealership and has a good inventory.

24. The Rice - West Covina property was originally purchased for \$20,000. A building was constructed on the property at a cost of \$20,000. The Rice - West Covina property is owned by Margaret V. Rice.

25. The Rice - West Covina property consists of 6,000 sq. ft. The building on the property is between 2,000 - 2,500 sq. ft.

26. The motorcycle inventory at Rice - West Covina is approximately \$150,000. The parts inventory is approximately \$15,000.

Le Bard

27. The shares of Le Bard are owned as follows:

Rhea and Aubrey Gilbert Le Bard, Jr...81%

Aubrey Gilbert Le Bard, III....17% }

Sharon Hoss (sister to Le Bard, III)...2%

28. Aubrey Le Bard, Jr. has been a motorcycle dealer for 35 years and had been dealing with Honda for 15 years.

Aubrey Le Bard III has been in the motorcycle sales business for 18 years.

29. Mr. and Mrs. Aubrey Gilbert Le Bard, Jr., own the property and lease it to Le Bard.

30. Le Bard is located on a one and one-half acre site. The dealership building includes 12,500 sq. ft. on the ground floor and approximately 2,500 sq. ft. in the mezzanine.

31. Le Bard also operates a BMW motorcycle franchise at the same location.

32. Le Bard's building was designed and built specifically for motor vehicle sales and service.

Facts Relating to the Effect  
of Establishing an Additional  
Motorcycle Franchise on the Retail  
Motorcycle Business and the Con-  
suming Public in the Relevant  
Market Area. [§3063(2)]

33. There are a total of five existing Honda dealerships in the relevant market area.

34. As indicated above, Dye initially protested the proposed dealership but decided to put its business up for sale rather than pursue its protest.<sup>3/</sup> Dye has been a dealership since 1965, and, despite the dealer's best efforts, the dealership is sustaining losses.

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3. The Dye protest was dismissed for failure to comply with the necessary regulatory requirements. See paragraph 6 above.

48. While awaiting a decision from Honda, Rice - West Covina contacted and attempted to negotiate with the owner of the former Hacienda location.

49. Rice - West Covina ceased these negotiations when a sign appeared at the Hacienda location announcing the reopening of the Honda dealership. No reopening occurred at this location.

50. Honda's personnel never acknowledged receipt of Rice - West Covina's written proposal to relocate to the Hacienda facility.

51. Rice - West Covina is financially capable of relocation and as of the date of the hearing, was continuing in its efforts to find a suitable location.

52. Honda has a policy not to grant multiple Honda dealerships to any one dealer. This policy does not affect dealers with multiple dealerships, such as Rice - El Monte and Rice - West Covina, which were in existence prior to the establishment of the policy.

53. Honda is not pleased with the operation at Rice - West Covina and prefers Rice Motor Co. to have only one franchise in the market area.

54. Except in 1979, when motorcycle sales increased because of gas lines, the demand for new Honda motorcycles has declined. Honda rebate programs are being used to stimulate sales.

55. A number of motorcycle dealerships in the area are in a weak financial position.

56. There has been continuous discounting below the suggested retail price of motorcycles in the relevant market area since 1976.

57. Reduced profit per motorcycle sold requires a dealership to reduce services to the consuming public and sell more units in order to remain viable.

58. The majority of motorcycle consumers are between the ages of 18 and 35, with the bulk of purchasers being between 20 to 35. Most motorcycle purchasers have incomes between \$10,000 and \$15,000.

59. A significant portion of a motorcycle dealership's sales require financing. The current high interest rates have made it impossible for many potential purchasers to obtain financing.

60. Competition from other motorcycle lines is affecting Honda more than in the past.

61. There are currently 5 Honda, 5 Yamaha, 4 Kawasaki and 4 Suzuki dealerships within the relevant market area.

Facts Relating to Whether it  
Would be Injurious to the Public  
Welfare for an Additional Franchise  
to be Established [§3063(3)]

62. From January, 1979 to May, 1981, 60% of Rice - West Covina's sales were into zip codes within 5 miles of the proposed dealership.

63. Hacienda sold 60% of their units in zip code areas within 5 miles of the dealership.

64. The chart below indicates the number of Honda motorcycle sales in California and in the Honda Southern California territory.<sup>4/</sup>

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
Honda Territory	23,958	30,125	24,623	31,492	25,517
Honda California Sales	56,701	70,975	58,944	74,926	64,692

65. All of the protestants experienced a sales decrease in 1980. Rice - West Covina lost the least number of sales.

<u>Dealer</u>	<u>Sales 1979</u>	<u>Sales 1980</u>	<u>Sales Difference</u>
Rice - West Covina	426	410	(16)
Rice - El Monte	1302	1051	(251)
Le Bard	723	433	(290)

66. Although Rice - West Covina lost a total of 16 sales in 1980, its percentage of sales of the territory continues to increase, as it has since 1976.

<u>Year</u>	<u>Total Sales</u>	<u>Rice - West Covina</u>
		<u>Percent of All Honda Sales in Territory</u>
1976	219	.93
1977	331	1.12
1978	288	1.20
1979	426	1.38
1980	410	1.60

67. Rice - West Covina achieved 1.41% of the total sales of the territory during the first quarter of 1980 and increased that to 1.54% during the first quarter of 1981.

4. The Honda Southern California Territory includes Imperial, San Diego, Orange and portions of Los Angeles Counties.

68. Rice - West Covina is the closest dealer to the proposed dealership.

Facts Relating to Whether the Franchisees of the Same Line-Make in the Relevant Market Area are Providing Adequate Competition and Convenient Consumer Care for the Motor Vehicles of the Line-Make in the Market Area, Including the Adequacy of Motorcycle Sales and Service Facilities, Equipment, Supply of Vehicle Parts, and Qualified Service Personnel [§3063(4)]

69. Certain Honda dealers' sales penetration and gross sales figures within a 5-mile radius of the proposed site were presented. No figures were presented, however, for penetration of all Honda dealers within the 10-mile relevant market area.

70. There are a sufficient number of Honda mechanics within the relevant market area to adequately service the motorcycles of the consumers within that area.

Rice - El Monte

71. Rice - El Monte currently employs seven mechanics.

72. In addition to the seven mechanics, Rice - El Monte has seven other employees. These include two parts counterpersons, a parts manager, a secretary, a secretary receptionist, a salesman, and a general manager.<sup>5/</sup>

73. The service department at Rice - El Monte averages \$7,000 to \$8,000 per month in service work.

74. Rice - El Monte is currently operating at 100% capacity in its service department.

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5. Timothy Paul Rice supervises the operation of both Rice dealerships.

Rice - West Covina

75. Rice - West Covina currently employs five mechanics.

76. In addition to the five mechanics, Rice - West Covina has four other employees. These include a parts counterperson, a parts manager, a salesman, and a general manager.

77. The service department at Rice - West Covina averages \$3,000 to \$4,000 per month in service work.

Le Bard

78. Le Bard currently employs three mechanics as well as a service manager.

79. In addition to the four employees in the service department, Le Bard has fifteen other employees. These include eight in parts, four in sales, two in the office, and Aubrey Le Bard, Jr., who supervises the assembly and preparation of new motorcycles. In addition to the above, Aubrey Le Bard, III. is at the dealership full time as manager of the dealership.

80. Le Bard is deficient one mechanic based on its current volume of service work. This shortage has existed for at least 10 months.

81. In an effort to hire additional qualified service personnel, several Honda dealerships have run advertisements that service positions are available. In response to one such ad, Le Bard received 35 applications. Only one of the 35 applicants was qualified and he was hired by another Honda dealer.

Dye

82. Dye currently employs two mechanics and two trainees. The dealership is deficient two mechanics and has two unused service stalls.

83. Honda conducts classes designed to train Honda motorcycle mechanics. Admission to these classes is limited to mechanics who have passed a written examination. For a student graduating from a technical or trade school, two years of experience is usually necessary before the written examination can be passed. Honda does not train mechanics immediately out of technical or trade school.

84. Ninety-eight percent (98%) of the students at the Honda training classes are mechanics who are currently employed at Honda dealerships.

85. Attached is an April, 1981 letter written by the Honda District Service Manager, Scott Connor, concerning the new dealership in Hacienda Heights.

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Date April 22, 1981

Donovan Fuhrmann

From S. Conner, DSM, S-14B

Subject: New Dealership in Hacienda Heights

The addition of another Honda dealership in this already overpopulated area would not be in American Honda Motor Co., Inc.'s best interest. Most of the units and parts sales generated by this dealership would not be additional sales, but sales taken away from the existing dealerships. In this day and age, when motorcycle dealerships have to cut any costs they can in order to make a profit, taking sales away from them would be detrimental to their businesses.

The proposed new dealership in Hacienda Heights is starting out with no existing personnel in a brand new location. We in the motorcycle industry all know about the present problem of limited qualified personnel available. Therefore, this new dealership would have to pull personnel from other dealerships in the area, putting an additional burden on the other already understaffed dealerships. Setting up a brand new location with an owner that has never been in the motorcycle business will take a great deal of the District Service Manager's and District Sales Manager's time, helping the unfamiliar owner familiarize himself with the motorcycle industry in general and specifics on how to do and what not to do when setting up his new store. Therefore, this time would be taken away from existing dealerships who desperately need all the help they can get.

The addition of another service department in this area would not give the local customers any better service than they are now receiving. If the new dealership could find qualified, competent personnel to man the service department, it would only pull service work away from the other service departments in the area, which are finally starting to show a profit.

The problem of finding qualified personnel is a real problem being experienced by dealers throughout this area. Some dealerships in this area are running ads for additional personnel in motorcycle publications. These ads have turned up absolutely no applicants.

By not putting another dealership in this area, American Honda would have more flexibility in relocating and upgrading some of the smaller dealerships in this area that do not meet American Honda Motor Co., Inc.'s standards. By setting up this new dealership, American Honda may cut any flexibility it now has, thus, possibly never being able to relocate or upgrade some of the existing dealerships.

In my professional opinion, as a senior District Service Manager, the addition of this dealership would not be an asset to American Honda. However, if American Honda does make a firm decision to set up this dealership, I will do my best to make this dealership work despite the problems it will cause.

S. Conner

SC:jp19

cc: E. Glenn

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*Protector 2  
Exhibit # 2*

86. Honda presented no evidence critical of the protestants' ability to adequately serve the Honda motorcycle consumers in the relevant market area.

Facts Relating to Whether the Establishment of an Additional Franchise Would Increase Competition and Therefore be in the Public Interest [§3063(5)]

87. Compared to the mid-1960s, Honda motorcycle dealers are currently experiencing more competition between themselves and with competing line makes.

88. This increased competition has adversely affected the profitability of the existing Honda dealerships.

89. The market analysis upon which Honda based its determination to establish another dealership in Hacienda Heights did not consider the profitability nor quality of service of the protestants.

90. None of the proposed principals of the new dealership have had any experience in operating a motor vehicle dealership.

91. Sixty percent (60%) of a Honda motorcycle dealer's sales are generally within 4½ to 5 miles of its location.

92. The straight line distance between Rice - West Covina and the proposed dealership is 4.0 miles. The driving distance between Rice - West Covina and the proposed dealership is 4.6 miles and requires 9 minutes driving time.

93. From January, 1979 to May, 1981, 60% of West Covina's sales were within 5 miles of the proposed dealership.

94. Rice - West Covina has operated at a loss the last six years.

95. Honda's standards for the proposed dealership require a building of 6,000 to 6,500 sq. ft.

96. The proposed dealership's facilities includes a building of 5,600 to 5,800 sq. ft.

97. Honda's Service Management Manual recommends that the proposed dealership employ three mechanics and a service manager. The service manager is to be one of the principals and has no experience in operating a motorcycle service department.

#### Determination of Issues

Protestants have established that there is good cause for not permitting the establishment of a Honda dealership for the following reasons:

- a. The additional franchise will jeopardize the permanent investment of the Protestants in light of market conditions [§3063(1)];
- b. Establishment of an additional motorcycle franchise will have an adverse effect on the retail motorcycle business and the consuming public in the relevant market area, considering also the history of operations at the proposed new location [§3063(2)];
- c. Establishment of an additional motorcycle franchise will be injurious to the public welfare [§3063(3)];

d. Franchisees of the same line-makeup in the relevant market area are providing adequate competition and convenient consumer care for Honda motorcycles in the market area, including adequate motorcycle sales and service facilities, equipment, supply of motorcycle parts and qualified service personnel. [§3063(4)]; and

e. Establishment of an additional motorcycle franchise in the market area would not increase competition so as to be in the public interest but will cause damage to the business of the existing Honda dealers in the market area [§3063(5)].

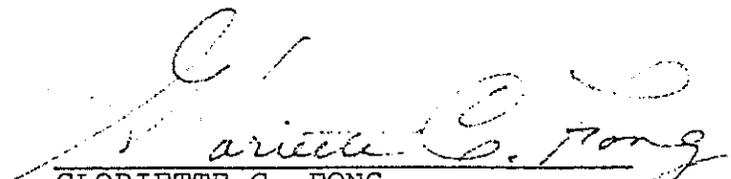
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THEREFORE, the following proposed decision is respectfully submitted:

The protest is sustained. American Honda Motor Co., Inc. shall not establish the proposed dealer.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter, as a result of a hearing held before me on the above dates and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: September 4, 1981

  
GLORIETTE C. FONG  
Administrative Law Judge  
New Motor Vehicle Board