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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

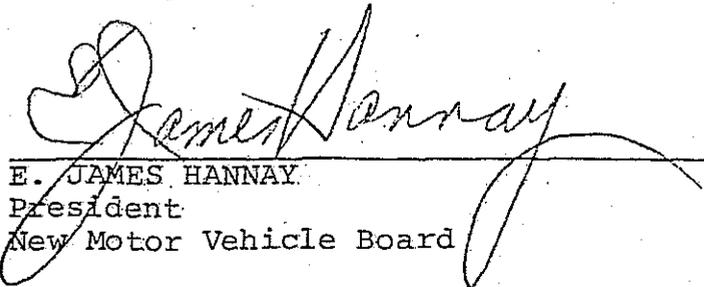
In the Matter of the Protest of)
DOWNTOWN L.A. IMPORTS, INC.,) Protest No. PR-343-81
Protestant,)
vs.)
FIAT MOTORS OF NORTH AMERICA,)
INC.,)
Respondent.)

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 4th day of June, 1982.



E. JAMES HANNAY
President
New Motor Vehicle Board

New Motor Vehicle Board
1507-21st Street, Suite 330
Sacramento, California 95814

In the Matter of the Protest of)
DOWNTOWN L.A. IMPORTS, INC.,)
Protestant,)
vs.)
FIAT MOTORS OF NORTH AMERICA, INC.,)
Respondent.)

Protest No. PR-343-81

PROPOSED DECISION

PROCEDURAL BACKGROUND

1. By letter dated August 14, 1981, Fiat Motors of North America (FMNA) notified Downtown L.A. Imports, Inc. (Downtown) that FMNA had decided "to terminate the dealer agreement presently existing between Fiat and Downtown L.A. Imports, Inc."

2. On September 4, 1981, Downtown filed a protest with the New Motor Vehicle Board (Board) pursuant to the provisions of Vehicle Code Section 3060.^{1/}

^{1/} All references are to the California Vehicle Code unless otherwise indicated.

3. A hearing on the protest was held before Merilyn Wong, Administrative Law Judge for the Board, commencing on February 8, 1982 and concluding on February 11, 1982.

4. FMNA was represented by Richard Ackerman of Herzfeld and Rubin. Downtown was initially represented by Pilot & Spar. Downtown was represented at the hearing by Joseph A. Weiss.

ISSUES PRESENTED

5. Section 3066 imposes on FMNA the burden to establish that there is good cause to "terminate, or refuse to continue a franchise." Section 3061 requires that the Board shall take into consideration the following factors:

(a) Amount of business transacted by the franchisee, as compared to the business available to the franchisee;
[§ 3061(1)]

(b) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise; [§ 3061(2)]

- (c) Permanency of the investment; [§ 3061(3)]

- (d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted; [§ 3061(4)]

- (e) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public; [§ 3061(5)]

- (f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee; [§ 3061(6)]

- (g) Extent of franchisee's failure to comply with the terms of the franchisor. [§ 3061(7)]

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FINDINGS OF FACT

FACTS RELATING TO THE AMOUNT OF BUSINESS
TRANSACTIONED BY DOWNTOWN AS COMPARED
TO THE BUSINESS AVAILABLE TO IT
[§ 3061(1)]

6. Downtown has refused to purchase or order any new Fiats from FMNA since September of 1980. Downtown has not had any new Fiats in its inventory since November 11, 1981. Downtown has never ordered, purchased, stocked, or sold any new 1981 or 1982 Fiats.

7. Downtown does not presently have any new Fiat demonstrators.

8. The public entrance to the Fiat showroom area at Downtown has been locked and the area is being used for displaying new Volkswagens.^{2/}

9. Downtown is not presently promoting the sale of new Fiats. Prospective purchasers of new Fiats are informed that Downtown does not stock or sell new Fiats and new Fiats will not be specially ordered.

^{2/} Downtown also operates a Volkswagen dealership at the same location.

10. The following represents Downtown's sales of new Fiats for the years indicated:

<u>Downtown's Sales of New Fiats</u>				
<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
221	228	132	31	0

Of the 31 vehicles sold in 1981, all were 1980 or older models.

11. Downtown's refusal to order or stock new Fiats has resulted in a decline in Downtown's share of Fiat sales in its zone. The following represents Downtown's per cent of Fiat sales in FMNA's Los Angeles Zone for the years indicated:

<u>Year</u>	<u>Downtown's Per cent of Fiat Sales in Zone</u>
1978	16.2%
1979	15.1%
1980	17.2%
1981	0.68%

FACTS RELATING TO THE INVESTMENT NECESSARILY
MADE AND OBLIGATIONS INCURRED BY
DOWNTOWN TO PERFORM ITS PART
OF THE FRANCHISE
[\$ 3061(2)]

12. Nicholas N. Shammass is President and sole shareholder of Downtown.

13. The sales and service facility from which Downtown operates is located at 1907 South Figueroa, Los Angeles. Downtown has operated a Volkswagen franchise from that location since 1960. The facility was too large for Volkswagen, and Downtown divided the facility to accommodate the Fiat franchise on or about May 6, 1976.

14. Downtown did not acquire any additional land or build any additional buildings to accommodate the Fiat franchise.

15. Upon acquiring the Fiat franchise, Downtown erected a partition which separated the Volkswagen and Fiat showrooms.

16. Downtown has a Fiat parts inventory valued at approximately \$60,000.

17. Downtown does not have any new Fiats or new Fiat demonstrators in its inventory.

FACTS RELATING TO THE PERMANENCY OF INVESTMENT
[\$ 3061(3)]

18. It is estimated that \$10,000 of the \$60,000 parts inventory could be sold in a 60 day period. The remaining

inventory could be reduced by additional retail or wholesale sales, or by repurchase by FMNA. FMNA has no obligation to repurchase any of Downtown's parts inventory.

19. The dealership site contains showrooms, sales offices, and service facilities for both the Volkswagen and Fiat franchises.

20. Downtown has operated a Volkswagen franchise at the existing facility since 1960. Downtown made no additional permanent investment to accommodate the Fiat franchise which Downtown acquired in 1976.

21. No additional evidence was presented relating to Downtown's permanency of investment.

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FACTS RELATING TO WHETHER IT IS INJURIOUS OR
BENEFICIAL TO THE PUBLIC WELFARE FOR THE
FRANCHISE TO BE MODIFIED OR REPLACED
OR THE BUSINESS OF THE FRANCHISEE
DISRUPTED [§ 3061(4)]

22. The following indicates the location of the other Fiat dealerships in the Los Angeles area and the driving times and distances between them and Downtown:

LOS ANGELES FIAT DEALERSHIPS

<u>Surrounding Dealership Location</u>	<u>Driving Distance to Downtown</u>	<u>Driving Time to Downtown</u>
Alhambra	12 miles	16 min.
Pasadena	12 miles	17 min.
Hollywood	8 miles	12 min.
Studio City	14 miles	18 min.
Sherman Oaks	16 miles	20 min.
Santa Monica	14 miles	20 min.
Culver City	12 miles	17 min.
Gardena	11 miles	16 min.
Torrance	19 miles	26 min.
Compton	17 miles	24 min.
Long Beach	20 miles	26 min.
Whittier	21 miles	28 min.

23. FMNA has approved the request of its Western Zone Manager to establish a replacement dealer in the Downtown area if a suitable prospect can be located.

24. In the event that Downtown is terminated as a Fiat franchisee, FMNA plans to conduct a direct mailing to the Fiat owners presently being serviced by Downtown. The Fiat owners would be supplied with a complete list of the surrounding dealers and their addresses and phone numbers.

25. Fiat mechanics are required to pass a qualifying test in order to register with the Association of Fiat Technicians (AFST). Only those mechanics who are registered with AFST are considered by FMNA to be qualified Fiat mechanics. Presently Downtown has two AFST mechanics in its employ. None of Downtown's mechanics has:

- (a) attended a Fiat training course since August 15, 1980;
- (b) taken the service training course which introduced the 1981 model vehicle;
- (c) AFST training in Fiat air conditioning;

- (d) AFST training in Fiat electrical systems; or
- (e) taken the service training course which introduced the 1982 model vehicles.

26. The FMNA Zone Service Manager has continually noted that service school attendance was needed by Downtown's mechanics and recommended to Downtown's Service Manager that the mechanics attend said school.

27. Downtown last purchased a new Fiat from FMNA in September 1980. On November 11, 1981, Downtown sold the last remaining new Fiat it had in stock which was a 1979 model.

28. About September of 1980, Downtown made a decision to stop ordering and stocking new Fiats.

FACTS RELATING TO WHETHER THE FRANCHISEE
HAS ADEQUATE MOTOR VEHICLE SALES AND SERVICE
FACILITIES, EQUIPMENT, VEHICLE PARTS, AND QUALIFIED
SERVICE PERSONNEL TO REASONABLY PROVIDE FOR THE NEEDS
OF THE CONSUMERS FOR THE MOTOR VEHICLES HANDLED BY THE
FRANCHISEE AND HAS BEEN AND IS RENDERING ADEQUATE
SERVICES TO THE PUBLIC [§ 3061(5)]

29. From January 1980 to April 1981, Downtown has employed four different Fiat Service Managers. The current Fiat Service

Manager is responsible for the Fiat service department and also the Volkswagen service department.

30. In June 1979, Downtown had six AFST mechanics working in its Fiat service department. Downtown presently has two AFST mechanics in its employ.

31. See paragraphs 25 and 26 above.

32. Downtown has a Fiat parts inventory valued at approximately \$60,000.

FACTS RELATING TO WHETHER THE
FRANCHISEE FAILS TO FULFILL THE WARRANTY
OBLIGATIONS OF THE FRANCHISOR TO BE PERFORMED BY THE
FRANCHISEE [§ 3061(6)]

33. No evidence was presented indicating Downtown failed to fulfill the warranty obligations of FMNA.

FACTS RELATING TO THE EXTENT OF FRANCHISEE'S
FAILURE TO COMPLY WITH THE TERMS OF THE
FRANCHISE [§ 3061(7)]

34. The Fiat Distributors, Inc., Dealer Sales and Service Agreement (Agreement) in effect between Downtown and FMNA

contains a number of requirements concerning performance by Downtown.

Paragraphs 35 through 40 below indicate Fiat's requirements as well as Downtown's performance in relation to those requirements.

35. Agreement Requirement: The dealer will advertise and promote Fiat passenger cars and service in a business-like manner.^{3/}

Downtown's Performance: Downtown is not advertising Fiat passenger cars and service. Prospective purchasers who telephone Downtown to inquire about purchasing a new Fiat are told that Downtown no longer stocks or sells new Fiats, and that such automobiles will not be specially ordered.

36. Agreement Requirement: Fiat passenger cars will be displayed in a properly illuminated showroom in a manner to make them accessible to the public and customers.^{4/}

^{3/} Agreement, Page B2.

^{4/} Agreement, Page B2.

Downtown's Performance: Downtown does not presently utilize any of its facilities for a Fiat showroom. Downtown's former Fiat sales showroom adjoins Downtown's showroom for Volkswagens. Downtown is presently displaying new Volkswagens in its former Fiat sales showroom and using part of the showroom for a storage area.

37. Agreement Requirement: Dealer shall use its best efforts in order to achieve maximum sales performance in its market area for Fiat passenger cars.^{5/}

Downtown's Performance: On November 11, 1981, Downtown sold the last remaining new Fiat which it had in stock (a 1979 model). Downtown is not presently promoting the sale of Fiats through advertising or any other means. Downtown has not ordered, stocked, or sold any 1981 model or 1982 model Fiats. Downtown's percentage of zone sales has declined from 16.2 per cent in 1978 to 0.68 per cent in 1981.

38. Agreement Requirement: Dealer shall purchase and maintain on hand at all times for display and demonstration

^{5/} Agreement, Page C4, Section 10.

purposes an adequate stock of Fiat passenger cars to meet the requirements for dealer's territory.^{6/}

Downtown's Performance: Downtown has never purchased for display or demonstration any 1981 model or 1982 model Fiats.

39. Agreement Requirement: The dealer agrees to make its technical personnel available to attend such FDI (FMNA) technical training classes as will be conducted on a regular basis at FDI's regional training centers, and/or such FDI technical training classes as may be conducted from time to time at other convenient locations within the FDI region in which dealer is located.^{7/}

Downtown's Performance: None of Downtown's mechanics has attended a Fiat training course since August 15, 1980. None of Downtown's mechanics has taken the service training course which introduced the 1981 model Fiats nor the service training course which introduced the 1982 model Fiats.

^{6/} Agreement, Page C5, Section 11.

^{7/} Agreement, Page C9, Section 35.

40. Agreement Requirement: The dealer shall mail or deliver to FDI (FMNA) on or before the 10th day of each calendar month such forms as FDI reasonably may require, as well as a financial and operating statement reflecting separately the dealer's operations for the preceeding month and the dealer's operations from the beginning of the calendar year to the end of the preceeding month.^{8/}

Downtown's Performance: On numerous occasions, Downtown has failed to submit financial statements or has submitted financial statements late.

41. Downtown was contacted monthly by FMNA field personnel during the period of January 28, 1980 through August 31, 1981. The contact reports by FMNA's Zone Managers during the monthly visits noted deficiencies in Downtown's performance as a Fiat franchisee and made recommendations for corrective measures. Examples of the noted deficiencies and recommendations included:

^{8/} Agreement, Page C12, Section 48.

a. Deficiency:

Poor sales activity.

Recommended Corrective Measures:

Sales personnel should be motivated to sell aggressively new Fiats. Downtown should undertake to sell cars or terminate the franchise. A close follow-up by FMNA was recommended.

b. Deficiency:

Failure to order or stock new Fiats.

Recommended Corrective Measures:

Downtown was advised to order and stock new Fiats to facilitate sales activity.

c. Deficiency:

Deteriorated condition of inventory.

Recommended Corrective Measures:

The FMNA Zone Service Manager authorized warranty repair of the deteriorated inventory. The Zone Service Manager recommended an increased advertising effort to promote the sale of the existing inventory.

d. Deficiency:

Lack of strong management or direction.

Recommended Corrective Measures:

Downtown personnel should be motivated to sell new Fiats. The Zone Service Manager recommended a close follow-up by FMNA.

e. Deficiency:

Lack of advertising.

Recommended Corrective Measures:

It was recommended that Downtown increase advertising efforts and have "sales" to facilitate selling the remaining inventory.

f. Deficiency:

Failure to follow FMNA policies and procedures regarding warranty repair order processing.

Recommended Corrective Measures:

The Zone Service Manager advised that FMNA's warranty policies and procedures must be followed to facilitate the processing and payment of warranty claims.

g. Deficiency:

Failure to submit warranty claims within FMNA's 45-day submission period.

Recommended Corrective Measures:

The Zone Service Manager advised that FMNA's 45-day warranty submission time period must be rigidly adhered to and that claims submitted beyond the 45-day time period would not be paid by FMNA.

h. Deficiency:

Failure to utilize FMNA's warranty ledger.

Recommended Corrective Measures:

The Zone Service Manager recommended that Downtown utilize FMNA's warranty ledger to facilitate tracing and resolving any problems with outstanding or overdue warranty claims.

i. Deficiency:

Failure of mechanics to attend FMNA's service training school.

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Recommended Corrective Measures:

The Zone Service Manager frequently recommended that Downtown's mechanics attend FMNA's service training school.

j. Deficiency:

Failure to have warranty parts ready for scrap.

Recommended Corrective Measures:

The Zone Service Manager advised that warranty parts must be made available to substantiate certain warranty claims submitted to FMNA and that failure to have the parts available to scrap would result in a rejection by FMNA of the warranty claim.^{9/}

42. Downtown conceded that the business relationship between it and FMNA has deteriorated. Downtown refuses to resume selling Fiats unless FMNA changes its policies and procedures with regard to Downtown.

^{9/} The above represents only a sampling of the deficiencies noted and corrective measures recommended during the monthly contacts by FMNA's Zone Managers.

DETERMINATION OF ISSUES

It is determined that there is good cause for FMNA to terminate the Downtown franchise, in that:

- a. FMNA did establish that the amount of business transacted by Downtown was inadequate as compared to the business available to Downtown; [§ 3061(1)]

- b. FMNA did establish that Downtown did not make a material investment or incur material obligations in the performance of its part of the franchise. FMNA did establish, that the investment made and obligations incurred were in regard to operation of Downtown's Volkswagen franchise rather than Downtown's Fiat franchise; [§ 3061(2)]

- c. FMNA failed to establish that Downtown's investment is not permanent. FMNA did establish, however, that Downtown's permanent investment originally was and continues to be primarily utilized for the promotion and sale of new Volkswagen vehicles rather than Fiats; [§ 3061(3)]

- d. FMNA did establish that it would not be injurious to the public welfare for the franchise to be replaced and the business of Downtown to be disrupted;
[§ 3061(4)]

- e. FMNA failed to establish that Downtown does not have adequate sales and service facilities, equipment, and vehicle parts. FMNA did establish that Downtown is not utilizing any of its sales facilities for the sale of Fiats. FMNA did establish that Downtown does not have qualified service personnel to reasonably provide for the needs of consumers of Fiat vehicles and did establish that Downtown has not been and is not rendering adequate services to the public; [§ 3061(5)]

- f. FMNA failed to establish that Downtown has not fulfilled the warranty obligations of FMNA; [§ 3061(6)]

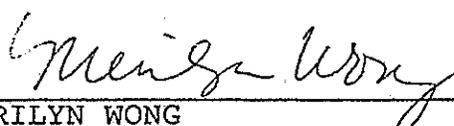
- g. FMNA did establish that Downtown's failure to comply with the terms of the franchise was material.
[§ 3061(7)]

The following proposed decision is respectfully submitted:

The Protest is overruled. FMNA has established good cause to terminate the Downtown franchise.

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: 6-3-82



MERILYN WONG
Administrative Law Judge
New Motor Vehicle Board