

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

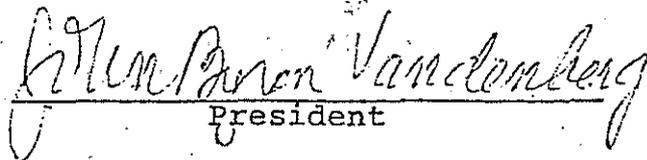
In the Matter of the Protest of)
IMPORT AUTO SALES & SERVICES, INC.,)
dba IMPORT AUTO,)
Protestant,) Protest No. PR-67-75
vs.)
RENAULT WEST, INC.,) L-10712
Franchisor.)
_____)

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 September 21, 1976


President

BEFORE THE NEW MOTOR VEHICLE BOARD
OF THE STATE OF CALIFORNIA.

In the Matter of the Protest of
IMPORT AUTO SALES & SERVICES, INC.,
dba IMPORT AUTO,

Protestant,

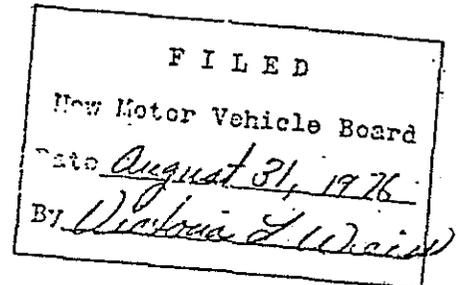
vs.

RENAULT WEST, INC.,

Franchisor.

PROTEST NO. PR-67-75

L-10712



PROPOSED DECISION

This matter came on regularly for hearing before Philip V. Sarkisian, administrative law judge of the Office of Administrative Hearings, at Los Angeles, California, on May 10 and 11, 1976. Protestant Import Auto Sales and Services, Inc., dba Import Auto, was represented by Donald C. Wallace, Jr. of Wallace and Deatherage, attorneys at law. Respondent Renault West, Inc. was represented by Richard D. DeLuce of Lawler, Felix and Hall, attorneys at law. Oral and documentary evidence was introduced and the record was held open to permit the parties to file briefs. Upon receipt of the opening and closing briefs from respondent and the reply brief from protestant, the case was submitted.

On July 14, 1976, the administrative law judge submitted his proposed decision to the board. Thereafter, on August 12, 1976, the board remanded the matter back to the administrative law judge for supplemental findings. The supplemental findings are incorporated in this proposed decision.

FINDINGS OF FACT:

I

On November 12, 1975, respondent Renault West, Inc., hereinafter sometimes referred to as franchisor, gave notice to protestant Import Auto Sales and Services, Inc., dba Import Auto, and to the New Motor Vehicle Board, of its intention to terminate

its dealer franchise agreement with Import Auto. A timely protest was filed by Import Auto and the matter is now pending before the New Motor Vehicle Board.

II

The specific grounds alleged by Renault West, Inc. for termination of the franchise are the following:

- (1) The dealership had failed to stock a representative inventory of Renault automobiles and had not had more than four cars in inventory at any time.
- (2) The dealership had not had a demonstrator at all for a number of months during 1975 and currently had only one demonstrator
- (3) The dealership sold only eleven automobiles in 1974 and through September 1975 had sold only five.
- (4) The dealership had been ordering 64% of its parts on an emergency basis showing poor inventory control.
- (5) The dealership had forfeited over \$600.00 in co-op advertising funds available from 1974.
- (6) The dealership had failed to vigorously promote Renault products.

III

Protestant's dealership is located at 1460 Long Beach Boulevard, Long Beach, California. Import Auto has been a dealer for Renault automobiles continuously since approximately 1955. Protestant is also a franchised dealer for Peugeot and Subaru automobiles.

IV

Extensive statistical evidence was introduced to show that during the past several years, Import Auto has been among the lowest ranked Renault dealers in the ten western states in terms of sales of new Renaults. Although Renault sales have not been large overall, no other dealer located in an urban area has done so poorly as Import Auto in 1975, and those dealers ranked below

the dealer in 1974 improved their sales performance whereas Import Auto dropped off substantially. The dealer sold eleven cars in 1974 and through September, 1975 had sold only five.

Several dealers who were ranked below respondent in sales have been terminated by Renault West in accordance with the law. Other existing dealers which were ranked below Import Auto for 1974 improved their performance during 1975.

At the end of 1975, Import Auto was ranked for the year near the bottom of Renault dealers in the western region, with only three dealers below it who are still dealers. Of these three, two were relatively new dealers and the other was located in a much smaller market area. Other dealers located in similar market areas to that of protestant have sold significantly more new Renaults than has protestant.

V

During 1975, Import Auto never had more than four Renaults in stock, although the model line calls for at least seven. From April 1975 to the date of the hearing, the dealer purchased only one automobile from Renault West.

The dealership had not had a demonstrator at all for a number of months during 1975.

VI

Renault West expressed complaints during 1975 concerning the dealer's inventory control for parts. During the period from January to September, 1975, the dealer had made emergency orders seventy percent of the time on the basis of the items ordered and at a sixty-four percent rate on a dollar value basis. The average for the district in which Import Auto is located is forty-five percent.

VII

The dealership forfeited over \$600.00 in co-op advertising funds available from 1974. Advertising efforts by the dealer were minimal, although it is also true that there was

minimal advertising support and promotion by the distributor.

VIII

Frank Marshall is the president and principal shareholder of protestant corporation. He purchased the corporation from its former owner in 1965, paying \$15,000.00 down and giving a \$50,000.00 note payable over five years for the balance of the price. The note was paid in accordance with its terms. At the time of the purchase, Import Auto sold two other brands in addition to Renault.

IX

Protestant contends that its sales record is due in part to alleged unfair competition from Diamond Motors, a distributor owned dealership located in Torrance. This charge of unfair competition was not established by the evidence.

X

In reviewing the evidence introduced, consideration has been given to the existing circumstances, including but not limited to all relevant factors set forth in Vehicle Code section 3061.

XI

It was not established that it would be injurious to the public welfare for the franchise to be terminated. On the contrary, protestant's decline in performance over the years indicates a lack of interest in promoting the Renault line in the area in which it is located and shows little concern with making the Renault automobiles available to the public in said area. As is indicated in paragraph V, protestant did not have sufficient Renaults available for demonstration to members of the public who were prospective purchasers. The dealer refused to accept an initial allotment of 1976 model Renaults.

XII

The franchisee has adequate vehicle sales and service facilities and service personnel, however, it does not maintain a satisfactory parts inventory as is evidenced by the fact that 64%

of its parts are ordered on an emergency basis. No contention was made by the franchisor, apart from the charge of poor inventory control, that protestant does not provide adequate service to owners of Renaults.

DETERMINATION OF ISSUES

The facts set forth in paragraphs I through XII, constitute good cause pursuant to Vehicle Code sections 3060 and 3061 to permit Renault West, Inc. to terminate Import Auto's franchise.

ORDER

The protest is overruled. The respondent is entitled to terminate the franchise.

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

Philip V. Sarkisian

PHILIP V. SARKISIAN
Administrative Law Judge
Office of Administrative Hearings

DATED: August 25, 1976
PVS:mh