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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
PUTNAM DODGE, INC., )  
Petitioner, ) Protest No. PR-92-76  
vs. ) N-8061  
CHRYSLER CORPORATION AND ) FILED: December 15, 1976  
CHRYSLER MOTORS CORPORATION, )  
Respondent. )  
..... )  
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DECISION

The above entitled matter came on regularly for hearing before Paul J. Doyle, Administrative Law Judge, Office of Administrative Hearings, on June 3, 1976, in San Francisco, California. Protest is filed pursuant to respondents disallowance of warranty reimbursement claims at a time in excess of the 30-day period indicated in Vehicle Code Section 3065(d). The Administrative Law Judge submitted his proposed decision to the board June 18, 1976, recommending the petition be denied.

The board, in adopting the proposed decision of the Administrative Law Judge modified it in that it makes further deter-

mination and an additional finding as is set forth below.

The board adopts the following findings of the hearing officer:

"I

Petitioner, Putnam Dodge, Inc., ("Putnam") is a vehicle dealership located in Burlingame, California, and one of the many franchisees of the respondent-franchiser, Chrysler Corporation and Chrysler Motors Corporation ("Chrysler").

"II

Among the contractual agreements between said franchisee and franchiser (hereinafter sometimes "parties") is one wherein the franchiser will reimburse the franchisee for the full cost of labor and materials which the franchisee incurs in repairing motor vehicles sold to the public under the Chrysler warranty.

Another such agreement is that such reimbursement is tentative, subject to Chrysler's inspecting and auditing the dealer's documentary evidence for the purpose of verifying the franchisee's warranty claims. After such an inspection and audit, should the dealer (franchisee) be unable to support those warranty payments made then the franchiser is entitled to charge back the amount of the tentative payment made.

"III

Such agreements were in force between the parties hereto since Putnam Dodge, Inc., became such a franchisee of Chrysler on June 15, 1974.

In October of 1974, however, there was added to such agreements a penalty provision wherein, in addition to the above charge-back (recoupment) the franchiser had the right to charge a certain percentage based on the amount of the tentative payments made.

"IV

During the period here in question, to wit, November 1, 1974 through October 31, 1975, Putnam submitted many such warranty claims; many of which were honored within a 30-day period from submission, while some were rejected with the reasons therefor stated in writing within this time.

These claims had been, as was respondent's business practice, scanned for accuracy of completeness and content through the Chrysler computerization process.

Among the claims so honored was the amount of \$51,509.21 (actually \$45,508.42) - the sum presently in question.

"V

Commencing late in 1975 and concluding early in 1976, Chrysler audited the books and records of Putnam re such claims for the period of time previously mentioned.

As a result of such audit Chrysler concluded that warranty claims in the total amount of \$45,508.42 were not, in fact, supportable when the individual customer invoices were compared to warranty claims submitted.

Thus, on January 25 or 26, 1976, and well beyond the 30-day period set forth in Section 3065(d) of the California Vehicle Code,

Chrysler first orally notified Putnam of the disallowance of the sum of \$51,530.91 (sic). Within said sum of petitioner's claimed amount of \$51,509.21 or the disallowed sum of \$51,530.91 is a penalty assessment of \$6,000.60, excluding any penalties for a 2-month period during which the same may have been charged to Putnam.

Chrysler said disavowel was first confirmed in writing on January 29, 1976.

"VI

The total amount so disclaimed as an obligation by Chrysler not only included labor and parts, such as are referred to in said Section 3065, but likewise included an unspecified amount for transportation expenditures also claimed by Putnam.

No evidence was introduced as to the particular sums contributed to labor or materials nor transportation.

"VII

In fact, Chrysler subsequently made a charge-back of the aforesaid entire amount from credits otherwise normally due to the accounts of Putnam.

"VIII

Petitioner Putnam essentially maintains that by honoring the questioned claims within the 30-day period provided by Section 3065 and by not giving any indication of a denial of the same until January of 1976, that Chrysler is estopped and forever barred from successfully maintaining these warranty charge-backs and thus cannot recoup said sum, nor any part thereof because of the

operational effect of Section 3065(d).

Putnam does not contend that the charge-back is without foundation nor that the overpayments Chrysler is seeking did not occur. Neither does Putnam claim that Chrysler failed to act on Putnam's warranty reimbursement claims within the aforesaid 30-day period.

Additionally, in its formal protest filed with the Board, and dated February 10, 1976, Putnam in paragraph V thereof pleads that Chrysler "...should not be allowed to charge the account of petitioner in violation of the terms of said Code Section [3065](d)."

"IX

Section 3065(d), operational as of July 1, 1974, reads as follows:

'(d)All such claims made by franchisees hereinunder shall be either approved or disapproved within 30 days after their receipt by the franchisor. When any such claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within such period, and each notice shall state the specific grounds upon which the disapproval is based. All claims made by franchisees under this section and Section 3064 for such labor and parts shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, shall not constitute a violation of this article.'

"X

Among the defenses, constitutionally, jurisdictionally and on the merits, (and without limitation thereon in the event of an appeal from this decision) Respondent Chrysler maintains that even though its computer process can check warranty claims for complete-

ness and content, it cannot determine the actual validity or veracity of these claims; that to require such a verification of validity and veracity would require such cumbersome and burdensome procedures, on both the franchiser and franchisee, as to literally defeat the intended purpose of Section 3065(d) - that purpose ostensibly providing for the prompt reimbursement of all truly-valid warranty claims within a specified period of time; that said section rebuttably presumes such claims are valid at the time of submission. Further, respondent maintains that section does not operate as a statute of limitations so as to prohibit the recoupment of moneys paid on unsupportable claims - nor was this section intended to abridge, or otherwise obviate the constitutional right of the freedom of contract (as by nullifying the existing agreements between the parties hereto).

"XI

In truth, if any of the claims in the amount of approximately \$45,000 or \$51,000 or approximately \$51,000 were supportable, respondent failed to support, or attempt to support the same either during the course of the current hearing or at either one or both of two meetings voluntarily held between the parties prior to this hearing.

At all times Chrysler was willing to review any alleged audit errors made. No such error(s) was known to have been claimed, at any time, by Putnam.

A small sampling (3) of such claims showed each to be, if not fraudulent, at least unfounded and fictional."

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Pursuant to the foregoing findings of fact, the Administrative Law Judge makes and the board adopts the following determinations of the issues presented:

"I

Section 3065(d) of the California Vehicle Code:

A. Was not intended to act as a shield for fictionalized, or otherwise unwarranted, claims;

B. Contains no expressed language indicating it operates as a statute of limitations, at least in instances such as the present;

C. Should not be permitted to abridge the freedom of the subject franchiser-franchisee pre-existing agreement;

D. Specifically provides no relief such as is herein sought (Finding VIII);

E. Does not prevent Chrysler's attempted recovery of its warranty overpayments.

"II

This decision does not purport to determine the exact amounts of obligations due and owing nor does it purport to resolve any civil and/or criminal matters between the parties. As to such, the parties are left to their appropriate remedies in the courts of competent jurisdiction.

"III

Petitioner failed to meet its burden of proving that respondent should not be allowed to charge back the account of petitioner - even if such a remedy were available in this instance.

"IV

The petition should be denied."

The board, after reviewing the entire matter and, after due deliberation, makes further determination of issues as follows:

V

Vehicle Code Section 3065, subsection (d), does not bar subsequent adjustments of payments made in a timely manner, upon warranty claims made by dealers.

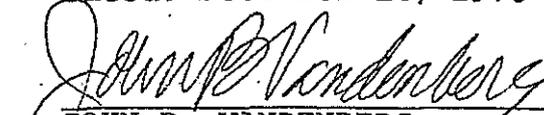
ORDER

The board adopts the proposed order of the hearing officer, to wit: The petition is denied.

  
THOMAS KALLAY, Member

The foregoing constitutes  
the decision of the NEW  
MOTOR VEHICLE BOARD.

Dated: December 14, 1976

  
JOHN B. VANDENBERG  
President