

1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

STEVENS CREEK EUROPEAN, INC.,
PHILIP BEITPOLICE, dba STEVENS
CREEK LAMBORGHINI-LOTUS,

Protestant,

vs.

CHRYSLER MOTOR CORPORATION;
NUOVA AUTOMOBILE FERRICCIO
LAMBORGHINI S.p.A.,

Respondents.

PROTEST NO. PR-933-87

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 15th day of November, 1988.



FLORENCE S. POST
President
New Motor Vehicle Board

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PHILIP BEITPOLICE, dba STEVENS)
CREEK LAMBORGHINI-LOTUS,)
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Protestants,) PROPOSED DECISION
)
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CHRYSLER MOTOR CORPORATION;)
NUOVA AUTOMOBILE FERRICCIO)
LAMBORGHINI S.p.A.)
)
Respondents.)
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PROCEDURAL BACKGROUND

1. On December 24, 1987, a protest was filed with the New Motor Vehicle Board ("Board") by Stevens Creek European, Inc., and Philip Beitpolice, dba Stevens Creek Lamborghini-Lotus ("Stevens Creek" and "Beitpolice" respectively). Stevens Creek is located at 3732 Stevens Creek Boulevard, San Jose, California. The named respondents are Chrysler Motor Corporation ("Chrysler") 12000 Chrysler Drive, Highland Park, Michigan, and Nuova Automobile Ferruccio Lamborghini S.p.A. ("NAFL"), the manufacturer, located in Italy.

2. The protest alleged that the respondents had refused to recognize Stevens Creek as a Lamborghini franchisee thereby

effectively terminating Stevens Creek as a Lamborghini franchisee in violation of Vehicle Code section 30601. Chrysler and NAFL deny that either Stevens Creek or Beitpolice is a Lamborghini franchisee.

3. A hearing was held before George R. Coan, Administrative Law Judge of the Board on May 31 and on June 1, 1988.

4. Stevens Creek was represented by Alexander E. Henson, Esq., 25 East Carmel Valley Road, Carmel Valley, California.

5. Lamborghini was represented by James B. Hicks, Esq., of White and Case, 333 South Hope Street, Los Angeles, California.

6. Chrysler Motor Corporation was represented by Paul R. Eichbauer, Esq., of the General Counsel's Office, 12000 Chrysler Drive, Highland Park, Michigan.

ISSUE PRESENTED

Whether Stevens Creek or Beitpolice is a Lamborghini franchisee pursuant to the provisions of the California Vehicle Code.

RELEVANT LAW

7. Section 3060 precludes termination of a franchise without prior notice to the franchisee and the Board. If a franchisee files a timely protest, the termination cannot become effective unless the Board finds that there is good cause for termination after a hearing called pursuant to section 3066.

1 Unless otherwise indicated, all references are to the California Vehicle Code.

8. For the provisions of section 3060 to be applicable, however, there must first be a franchise in existence between the parties. Section 331 defines a franchise as follows:

A "franchise" is a written agreement between two or more persons having all of the following conditions:

(a) A commercial relationship of definite duration or continuing indefinite duration.

(b) The franchisee is granted the right to offer and sell at retail new motor vehicles manufactured or distributed by the franchisor.

(c) The franchisee constitutes a component of the franchisor's distribution system.

(d) The operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor.

(e) The operation of a portion of the franchisee's business is substantially reliant on the franchisor for a continued supply of new vehicles, parts, and accessories.

FINDINGS OF FACT

9. Lamborghini automobiles are manufactured by NAFL in Italy.

10. Chrysler purchased NAFL in April of 1987.

11. Lamborghinis have been imported into the United States by Lamborghini of North America ("LONA").

12. LONA and PFJ Distribution Inc., ("PFJ") formed a partnership called Lamborghini West in July of 1985 to distribute Lamborghinis in the Western United States.

13. Lamborghini West, LONA and PFJ are not respondents in

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this protest. /2

14. Under the Lamborghini West partnership agreement, appointment of new dealers required the approval of PFJ and LONA. PFJ had three chief operating officers, Francisco Mir ("Mir"), Philip Fowler, Jr. ("Fowler"), and Jeffrey Gardner ("Gardner"). Each were empowered to act in behalf of PFJ. The only person empowered to act in behalf of LONA was Emile Novarro ("Novarro").

15. Stevens Creek has been a Lotus franchisee since 1985 and its president, Beitpolice, has been in the automobile business in this country since 1982.

16. Beitpolice was interested in becoming a Ferrari dealer and was informed by his Lotus representative that there was a dual Lotus/Ferrari dealership in Los Angeles. A Stevens Creek representative went to Los Angeles to inquire about what was necessary to become a Ferrari dealer. The Ferrari dealer contacted was Mir. Mir informed the Stevens Creek representative that he could not assist in obtaining a Ferrari franchise but that he was a Lamborghini distributor. Mir asked whether Stevens Creek would be interested in a Lamborghini franchise.

2/ LONA was originally named as a respondent in this protest but was dismissed on the motion of Stevens Creek. PFJ was not named as a respondent but, through its attorneys, filed a request to appear as an interested individual pursuant to section 3066(a). PFJ's request was granted by the Board but no appearance was made in behalf of PFJ at the hearing.

17. In March of 1986, Mir called Beitpolice and informed Beitpolice that he had been approved to be a Lamborghini dealer and that Beitpolice should come to Los Angeles to discuss the matter.

18. On March 18, 1986, Beitpolice traveled to Los Angeles and met again only with Mir. While there, Beitpolice was told by Mir that Mir was authorized to grant Lamborghini franchises, but that he was having trouble with his partners and that they were going to dissolve the partnership. Stevens Creek made no attempts to verify Mir's authority. Mir also informed Beitpolice that Mir expected to buy out his other partners, and himself become the distributor of Lamborghinis for the Western United States. Mir intended to call his new distributorship "New Lamborghini West."

19. The following occurred during the Los Angeles meeting:

(a) An agreement was executed between Mir and Beitpolice providing in part as follows: "Contingent upon Francisco Mir being awarded the distribution rights for the Lamborghini automobiles, for the Western United States . . . Philip Beitpolice, shall be awarded a dealership, for the San Jose area . . ." See Ex. 4, a copy of which is attached hereto and incorporated herein.

(b) Beitpolice received an invoice in the amount of \$157,000 for three Lamborghinis and "parts".

(c) Beitpolice issued a check in the amount of \$157,500 payable to Mir personally. This check was never passed on to PFJ or Lamborghini West.

20. Subsequently, Mir offered Beitpolice a pre-printed "New Lamborghini West" dealer agreement which Beitpolice refused to sign because Mir did not show Beitpolice that Mir was in fact the new distributor for Lamborghini. Mir was never awarded distribution rights for Lamborghini automobiles.

21. Over the next few months, Beitpolice bought an additional six or eight Lamborghinis from Mir. The checks for two of these cars were made out to "Lamborghini West" but the others, totaling \$300,000, were made payable to Mir personally. Mir did not pass the checks payable to him through to PFJ or Lamborghini West. Beitpolice did not receive six of the cars he paid for.

22. The sales of Lamborghini vehicles made to Stevens Creek were identified as sales made by FMG Motor International, a dealership owned by Fowler, Mir and Gardner. At least one vehicle was reported on a Department of Motor Vehicles ("Department") wholesale report of sale form indicating a sale between the two dealerships.

23. Stevens Creek was never licensed by the Department to sell new Lamborghinis. Lamborghini West ceased doing business shortly after the March 18, 1986 meeting of Mir and Beitpolice, and the partnership of PFJ and LONA, which created Lamborghini West, has since been dissolved.

24. Chrysler purchased NAFL in April of 1987, over a year after the alleged appointment of Beitpolice as a Lamborghini franchisee.

25. Mir alone had no actual authority to appoint Stevens Creek or Beitpolice as a Lamborghini franchisee.

26. Beitpolice dealt only with Mir in his efforts to obtain the Lamborghini franchise for Stevens Creek. Beitpolice made no inquiry about the extent of Mir's authority and relied solely upon the representation of Mir as to such authority. Beitpolice dealt with Mir at his own risk and cannot rely upon ostensible authority to bind Chrysler or NAFL to a Lamborghini franchise.

27. Beitpolice's contacts with Chrysler and NAFL were all subsequent to the time Stevens Creek allegedly obtained a franchise from Mir. None of these contacts resulted in a grant of a franchise to Beitpolice or Stevens Creek and none of them resulted in a ratification of any purported franchise to sell Lamborghini automobiles.

28. The only writing in existence which purports to be a franchise for Lamborghini automobiles is Exhibit 4, a copy of which is attached hereto. Exhibit 4 does not constitute a franchise pursuant to section 331.

DETERMINATION OF ISSUE

29. Neither Stevens Creek nor Beitpolice has ever been authorized to sell new Lamborghini automobiles under a franchise.

30. There is no attempt by either Chrysler or NAFL to terminate an existing franchise. Section 3060 is not applicable to these proceedings.

31. The Board is without jurisdiction to hear this matter under section 3060.

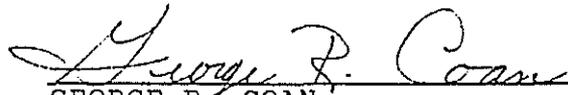
PROPOSED DECISION

THEREFORE, the following proposed decision is respectfully submitted:

The protest is dismissed with prejudice.

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 and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: October 25, 1988



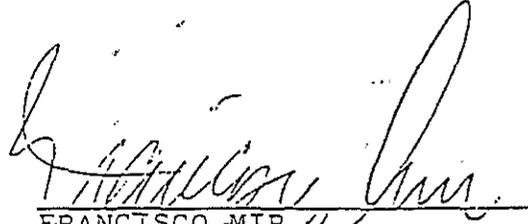
GEORGE R. COAN
Administrative Law Judge
New Motor Vehicle Board

Lamborghini West

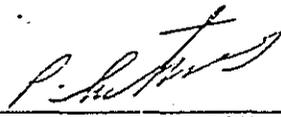
MARCH 18, 1986

FRANCISCO MIR AND PHILIP BEITPOULICE WHEREAS PARTIES AGREE AS FOLLOWS:

1. CONTINGENT UPON FRANCISCO MIR BEING AWARDED THE DISTRIBUTION RIGHTS FOR THE LAMBORGHINI AUTOMOBILES, FOR THE WESTERN UNITED STATES.
2. PHILIP BEITPOULICE, SHALL BE AWARDED A DEALERSHIP, FOR THE SAN JOSE AREA. MR. BEITPOULICE GRANTED RIGHTS AS CONDITION UPON HIS AGREEMENT TO COMPLY FULLY WITH ALL TERMS AND CONDITIONS OF LAMBORGHINI DEALERSHIP, AS IT EXSISTS NOW, AND, AS IT MAY CHANGE IN THE FUTURE!


FRANCISCO MIR

3-18-86


PHILIP BEITPOULICE

3-18-86

LAMBORGHINI WEST	
WESTERN UNITED STATES	
EXHIBIT	4
FILE NO.	