

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

CERTIFIED MAIL

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
TARA MOTORS, a California )  
Limited Partnership, dba )  
TOYOTA OF EL CAJON, )  
Protestant, )  
vs. )  
TOYOTA MOTOR DISTRIBUTORS, INC., )  
Respondent. )  
\_\_\_\_\_  
LORELEI M. TRENDEL, )  
Interested Individual, )  
\_\_\_\_\_

Protest No. PR-976-88

DECISION AND ORDER  
OF THE BOARD

1. On June 22, 1989, the Public Members of New Motor Vehicle Board met and took action in regard to the above captioned Protest.

2. The Board adopted Paragraphs one (1) through one hundred one (101) of the Proposed Decision of Administrative Law Judge Stuart A. Wein, dated April 14, 1989.





1 Failure of these conditions to occur within the time  
2 stated shall result in the termination of Tara as a Toyota  
3 franchisee.

4 Toyota shall not unreasonably withhold its approval of any  
5 candidate(s) for General Manager or buyer, but Toyota shall not  
6 be obligated to consider or approve any member of the Trenfel  
7 family as General Manager or buyer.

8 All parties shall act reasonably and in good faith in  
9 regard to all obligations imposed upon them by this Decision and  
10 Order.

11 The Board retains jurisdiction to resolve any dispute  
12 which may arise between the parties as to interpretation of or  
13 compliance with the terms of this Decision and Order.

14  
15 IT IS SO ORDERED this 22nd day of June, 1989.

16  
17  
18   
19 LIUCIJA MAZEIKA  
20 Vice-President  
21 New Motor Vehicle Board

22 A. A. Pierce, Director, DMV  
23 John Lancara, Acting Program Manager  
24 Occupational Licensing, DMV  
25  
26  
27  
28

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

|  |  |
|--|--|
| In the Matter of the Protest of: )<br>TARA MOTORS, a California )<br>Limited Partnership, dba )<br>TOYOTA OF EL CAJON, )<br><br>Protestant, )<br>vs. )<br>TOYOTA MOTOR DISTRIBUTORS, INC., )<br><br>Respondent. )<br><hr/> LORELEI M. TRENFEI, )<br><br>Interested Individual )<br><hr/> | PROPOSED DECISION<br><br>Protest No. PR-976-88 |
|--|--|

PROCEDURAL BACKGROUND

1. On April 29, 1988, Toyota Motor Distributors, Inc. ("Toyota" or "TMD") notified Tara Motors, dba Toyota of El Cajon ("Tara") that it was terminating the Toyota Dealer Agreement of Tara. The notice of termination was received by the New Motor Vehicle Board ("Board") on May 2, 1988.
  
2. The notice of termination stated, in pertinent part, that:  

This action is deemed necessary due to the following:

  1. A dispute, disagreement, or controversy between or among partners, managers, officers or stockholders of Toyota of El Cajon that, in the reasonable opinion of TMD, adversely affects the ownership, operation, management, business, reputation or interest of Toyota of El Cajon or TMD.
  
  2. Toyota of El Cajon has retained William Trenfel to act as General Manager, who in TMD's opinion is not competent for the position and who has acted in a manner contrary to the continued best interests of both Toyota of El Cajon and TMD.

3. A change in General Manager from the person specified in the Toyota Dealer Agreement, i.e., Lorelei Trenfel, without the prior written consent of TMD.
3. On May 20, 1988, Tara filed a protest with the Board pursuant to the provisions of California Vehicle Code section 3060.<sup>1</sup>
4. On June 20, 1988, Lorelei Trenfel requested and was granted "interested individual" status by the Board pursuant to section 3066(a).
5. On November 14, 1988, the Board received from Toyota an amended notice of termination, clarifying the specific paragraphs of the Dealer Agreement which Toyota alleges to have been breached by Tara.<sup>2</sup>
6. Toyota's second amendment to the notice of termination was received by the Board on December 2, 1988. This amendment stated that Toyota's observations as to William Trenfel's qualifications reflected solely Toyota's opinion.

---

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

2/ This amended notice essentially reiterated the grounds described in the April 29, 1988, notice of termination.

7. A hearing on the protest was held before Stuart A. Wein, Administrative Law Judge for the Board. The hearing was conducted on December 5, 16, 19, 22, 23, 27, 28, 29 and 30, 1988.
  
8. Toyota was represented by Robert L. Ebe of the law firm of McCutchen, Doyle, Brown, & Enersen and Patricia Britton, Corporate Counsel, of Toyota Motor Distributors, Inc. Tara was represented by David L. Rosner of the law firm of Rosner, Owens, Nunziato & Henry. No appearance was made on behalf of Lorelei Trenfel.

#### ISSUES PRESENTED

9. Vehicle Code section 3066 imposes on Toyota the burden to establish that there is good cause to terminate or refuse to continue the franchise of Tara.
  
10. In determining whether good cause has been established for terminating or refusing to continue a franchise, section 3061 requires the Board to take into consideration the existing circumstances, including, but not limited to:
  - (a) Amount of business transacted by the franchisee, as compared to the business available to the franchisee.
  - (b) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.
  - (c) Permanency of the investment.

(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.

(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.

(f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.

(g) Extent of franchisee's failure to comply with the terms of the franchise.

#### IDENTITIES OF THE TRENFELS

11. George William Trenfel - Deceased husband of Goldene H. Trenfel, father of Lorelei Marie Trenfel and William George Trenfel; past co-trustor and past co-trustee of the George W. Trenfel and Goldene H. Trenfel Trust ("Family Trust"); past President, Trenfel Motors, Inc.
12. Goldene Hangos Trenfel - Widow of George William Trenfel; mother of Lorelei Marie Trenfel and William George Trenfel; trustor and trustee of the Family Trust.
13. Lorelei Marie Trenfel - Daughter of George W. Trenfel and Goldene H. Trenfel; former general manager of Tara-approved by Toyota.

14. William George Trenfel - Son of George W. and Goldene H. Trenfel; general manager and owner of Mitsubishi of El Cajon; present acting general manager of Tara-not approved by Toyota.

CONTENTIONS OF THE PARTIES

15. Toyota contends that Goldene Trenfel ("Mrs. Trenfel") and her representatives materially breached the Dealer Agreement in several respects. First, although aware that the dealership had serious operational and financial problems and that her relationship with its General Manager (Lorelei Trenfel) had deteriorated, Mrs. Trenfel breached express obligations and the implied covenant of good faith and fair dealing by withholding those circumstances from Toyota. Second, she unilaterally changed management without obtaining Toyota's approval, and notwithstanding Toyota's subsequent reasonable objection. Third, the management dispute adversely affected the dealership and Toyota. Toyota contends these circumstances materially breached the Dealer Agreement and justified its termination.

16. Tara concedes that Lorelei Trenfel was terminated and that Bill Trenfel assumed the duties as acting general manager without the prior written approval of Toyota. However, Tara contends that Lorelei Trenfel was terminated for good cause in the best interests of Tara and Toyota, and that this breach of the Dealer Agreement was a technical one which did not constitute good cause to terminate the franchise. Further, Tara asserts it complied with all other terms in the Dealer Agreement.<sup>3</sup>

---

3/ Tara also alleges that section 11713.3 "raises the burden of proof" (sic) to show good cause to terminate the franchise. This section provides in pertinent part:

It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do any of the following...

(j) To deny the widow or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of the dealership or successor dealership under a valid franchise for a reasonable time after the death of the owner.

...

It is doubtful that this section is applicable to these circumstances. Tara has not filed a petition alleging a violation of this provision under Section 3050(c). Nor does there exist any evidence that Toyota denied Mrs. Trenfel the opportunity to participate in the ownership of the business for a reasonable time following her husband's death. From the information Toyota had, Lorelei Trenfel was the approved general manager and was nominated as the successor in interest in Tara. Hence, Toyota may have been required under section 11713.3(j) to provide Lorelei, the successor, a reasonable time to participate in the ownership of Tara. Mrs. Trenfel's conduct in refusing to inform Toyota as to the ownership of Tara frustrated Toyota's compliance with its obligation under section 11713.3(j).

17. Although Toyota based its decision to terminate Tara's dealership on conduct arising during the course of the present Dealer Agreement commencing in 1987, it is necessary to review events which occurred prior to that time as well as the parties' activities subsequent to the termination notice to understand fully the facts as they pertain to this dispute. The issues raised in the notice of termination and amended notices will then be addressed in conjunction with the factors enumerated in section 3061 above.

#### FINDINGS OF FACT

##### I. Factual Background

##### A. Ownership Interests of Tara Motors

18. George William Trenfel ("George Trenfel") had, at the time of his death, been a successful automobile dealer for over 20 years. He was the founder and president of Trenfel Motors, Inc., which was the predecessor of Tara Motors.

19. In 1981, William George Trenfel ("Bill Trenfel") obtained 25% of the stock of Trenfel Motors, Inc. Mr. & Mrs. Trenfel retained 75% of the stock. In April, 1986, Bill Trenfel sold back his interest in Trenfel Motors, Inc. to Mr. & Mrs. Trenfel.
20. In June, 1986, the entities which operated Toyota of El Cajon were restructured. The result was the creation of the limited partnership known as Tara Motors, dba Toyota of El Cajon. The limited partner of Tara Motors is Trenfel Motors, Inc. The general partner of Tara Motors is the Family Trust which was created on July 31, 1978.
21. Trenfel Motors, Inc. is the owner of 99% of Tara Motors. The Family Trust is the owner of a 1% interest of Tara Motors. The Family Trust is also the owner of 100% of the issued and outstanding capital stock of Trenfel Motors, Inc.
22. Prior to George Trenfel's death, he and Mrs. Trenfel were co-trustees of the Family Trust. Presently, Mrs. Trenfel is the sole trustee of the Family Trust.

B. Occurrences From 1981 to March of 1986

23. In 1981, George Trenfel obtained Toyota's consent to name his son Bill, general manager of the Toyota dealership. Bill Trenfel had worked for his father at the dealership since 1979.
24. In 1982, Bill Trenfel became a part owner and general manager of El Cajon Mitsubishi, a dealership located across the street from Tara. The other owner was George Trenfel.
25. While father and son were involved in both dealerships, Tara enjoyed a high level of performance and profitability. However, in 1985, the dealership's percentage of sales in Toyota's Los Angeles Region decreased; its sales volume rank in comparison with other dealers in the country dropped and its profitability declined.
26. Toyota, however, was not particularly concerned with this sales decline because of the respect it had for George Trenfel's abilities. The store was performing at an acceptable level, and it was Toyota's position that as long as George Trenfel was involved at the dealership, Toyota was comfortable with the situation.

27. On February 11, 1986, George Trenfel met with Jack Reilly ("Reilly"), Toyota's General Manager for the Los Angeles Region and Marshall Johnson ("Johnson"), Toyota's Assistant General Manager of the Los Angeles Region. Also present was Lorelei Trenfel. At the meeting George Trenfel indicated that his son's personal interests had adversely affected his work habits and his performance. George Trenfel expressed the opinion that Bill Trenfel's involvement with the Mitsubishi store and Bill's recreational activities detracted from the time Bill spent at the Toyota dealership. George Trenfel communicated to Reilly and Johnson his position that Bill Trenfel would never be successful as Tara's general manager.<sup>4</sup>

---

4/ Bill Trenfel and Mrs. Trenfel testified that the real reason for Bill's removal as Tara's general manager in 1986 stemmed from the deteriorating relationship between father and son. That relationship suffered in part according to Mrs. Trenfel and Bill Trenfel because of George Trenfel's use of alcohol. Since it is undisputed that Tara's sales declined during 1985, and that Bill Trenfel had in fact spent less time at Tara, it is not necessary to make any finding concerning this "unexpressed" rationale of George Trenfel. From Toyota's perspective-- since its personnel had not observed George Trenfel abuse alcohol--the reasons for removing Bill Trenfel as General Manager were accurately depicted by his father.

28. George Trenfel asked Reilly and Johnson to approve his request to remove Bill Trenfel and install Lorelei Trenfel as general manager of Tara. Lorelei graduated from NADA's Dealership Candidate Academy in 1985 and had been trained by her father to assume this role. She was recommended to Toyota by Tara's C.P.A., Howard Silberman; its attorney, Kevin Jasper; and representatives of Security Pacific Auto Finance ("SPAF") Tara's principal lender. Based on these factors, Reilly and Johnson conditionally approved Lorelei Trenfel as Tara's General Manager and Vice-President, provided that she train under her father for one (1) year, and that her performance be reviewed in March 1987, when the Dealer Agreement was due to expire.

29. In March 1986, Bill Trenfel sold his ownership interests in the Tara dealership to Mr. & Mrs. Trenfel. In return, George Trenfel sold his interest in the Mitsubishi dealership to Bill Trenfel. As of that date, Bill Trenfel has been and is the sole owner of the Mitsubishi dealership with no ownership interest in Tara.

C. Occurrences From April of 1986 to April of 1988

30. In 1986, under the combined efforts of George Trenfel (as dealer principal) and Lorelei Trenfel (as general manager), the dealership enjoyed a high level of sales performance and profitability when compared to such performance in 1985.

TARA  
1984, 1985, and 1986  
RETAIL TOTALS

|      | <u>UNITS SOLD</u> | <u>% OF L.A.<br/>REGION</u> |
|------|-------------------|-----------------------------|
| 1984 | 2295              | 1.87%                       |
| 1985 | 2201              | 1.58%                       |
| 1986 | 3077              | 2.07%                       |

TARA  
1984, 1985, and 1986  
RETAIL TRUCKS TOTALS

|      | <u>UNITS SOLD</u> | <u>% OF L.A.<br/>REGION</u> |
|------|-------------------|-----------------------------|
| 1984 | 1296              | 2.72%                       |
| 1985 | 1182              | 2.00%                       |
| 1986 | 1697              | 2.60%                       |

TARA  
1984, 1985, and 1986  
RETAIL CARS TOTALS

|      | <u>UNITS SOLD</u> | <u>% OF L.A.<br/>REGION</u> |
|------|-------------------|-----------------------------|
| 1984 | 999               | 1.33%                       |
| 1985 | 1019              | 1.27%                       |
| 1986 | 1380              | 1.66%                       |

TARA  
1984, 1985, and 1986  
FLEET TRUCKS TOTALS

|      | <u>UNITS SOLD</u> | <u>% OF L.A.<br/>REGION</u> |
|------|-------------------|-----------------------------|
| 1984 | 11                | 0.14%                       |
| 1985 | 26                | 0.29%                       |
| 1986 | 229               | 2.95%                       |

1984, 1985, and 1986  
NET PROFIT/LOSS - EL CAJON

| <u>YEAR</u> | <u>NET P/L</u> |
|-------------|----------------|
| 1984        | \$1,033,870    |
| 1985        | \$ 690.030     |
| 1986        | \$1,351,560    |

31. On March 10, 1987, George Trenfel formally nominated Lorelei Trenfel as the Owner/General Manager for a successor agreement.
32. In April 1987, Lorelei Trenfel's performance came up for review by Toyota. In light of the application and references submitted by Lorelei Trenfel, improved sales and earnings performance of Tara, and the previous sound relationship of the parties, Toyota approved a six-year Dealer Agreement on June 30, 1987. Toyota also approved Lorelei Trenfel as the successor.

33. Pertinent provisions of the current Dealer Agreement include:

IV. OWNERSHIP OF DEALER

DISTRIBUTOR enters into this Agreement in reliance upon DEALER's representation that the following persons, and only the following persons, will be the Owner(s) of DEALER and that, by their signatures hereto, such persons are committed to the achievement of the purposes and objectives of this Agreement and agree to abide by the terms and conditions herein:

| <u>NAME</u>                            | <u>ADDRESS</u>                     | <u>OWNERSHIP INTEREST</u>            |
|--|------------------------------------|--------------------------------------|
| Trenfel Motors, Inc.                   | 300 El Cajon Blvd.<br>El Cajon, CA | 99%                                  |
| George W. Trenfel & Goldene H. Trenfel | Co-Trustees                        | 1%                                   |
| George W. Trenfel                      | 300 El Cajon Blvd.<br>El Cajon, CA | President                            |
| Goldene H. Trenfel                     | 300 El Cajon Blvd.<br>El Cajon, CA | Secretary/Chief<br>Financial Officer |
| Lorelei M. Trenfel                     | 300 El Cajon Blvd.<br>El Cajon, CA | Vice President/<br>General Manager   |

V. MANAGEMENT OF THE DEALERSHIP

DISTRIBUTOR and DEALER agree that the retention of qualified management is of critical importance to the successful operation of DEALER. DISTRIBUTOR, therefore, enters into this Agreement upon DEALER's representation that Lorelei M. Trenfel, and no other person, exercises the function of General Manager and is in complete charge of DEALER's Toyota operations with authority to make all decisions on behalf of DEALER with respect to DEALER's operations. DEALER further agrees that the General Manager shall devote his or her full efforts to DEALER's operations.

## VI. CHANGE IN MANAGEMENT OR OWNERSHIP

This is a personal services contract. DISTRIBUTOR has entered into this Agreement because DEALER has represented to DISTRIBUTOR that the Owners and General Manager of DEALER identified herein possess the personal qualifications, skill and commitment necessary to ensure that DEALER will promote, sell and service Toyota Products in the most effective manner, enhance the Toyota image and increase market acceptance of Toyota Products. Because DISTRIBUTOR has entered into this Agreement in reliance upon these representations and DEALER's assurances of the active involvement of such persons in DEALER operations, any change in Ownership, no matter what the share or relationship between parties, or any changes in General Manager from the person specified herein, requires the prior written consent of DISTRIBUTOR, which DISTRIBUTOR shall not unreasonably withhold.

## XX. TERMINATION OF AGREEMENT

### B. TERMINATION FOR CAUSE

#### 2. Termination Upon Sixty Days Notice

DEALER and DISTRIBUTOR agree that the following conduct violates the terms and conditions of this Agreement and, if DEALER engages in such conduct, DISTRIBUTOR shall have the right to terminate this Agreement upon sixty days notice: ...

f. Any dispute, disagreement or controversy between or among partners, managers, officers or stockholders of DEALER which, in the reasonable opinion of DISTRIBUTOR, adversely affects the ownership, operation, management, business, reputation, or interests of DEALER or DISTRIBUTOR;

g. Retention by DEALER of any General Manager, who in DISTRIBUTOR's reasonable opinion is not competent or, if previously approved by DISTRIBUTOR, no longer possesses the requisite qualifications for the position or who has acted in a manner contrary to the continued best interests of both DEALER and DISTRIBUTOR;...

k. Breach or violation by DEALER of any other term or provision of this Agreement.

...

34. Because of the peculiar nature of Tara's ownership structure (which was established for tax reasons) Toyota required that special provisions be included in the standard form Dealer Agreement:

X. ADDITIONAL PROVISIONS

In consideration of DISTRIBUTOR's agreement to appoint DEALER as an authorized Toyota dealer, DEALER further agrees:

1. That the current ownership of the outstanding stock of TARA MOTORS, A CALIFORNIA CORPORATION located in El Cajon, California, is by the following persons in the percentages shown.

| <u>Name</u>                      | <u>Ownership</u> |
|----------------------------------|------------------|
| Trenfel Motors, Inc.             | 99%              |
| George W. and Goldene H. Trenfel | 1%               |

2. That any changes in ownership of said corporation without the prior written approval of TOYOTA MOTOR DISTRIBUTORS, INC. and TOYOTA MOTOR SALES, U.S.A., INC. will void this Toyota Dealer Agreement entered into between Toyota of El Cajon and TOYOTA MOTOR DISTRIBUTORS, INC.
3. That Lorelei M. Trenfel is currently exercising the functions of General Manager of Toyota of El Cajon, and, that Lorelei M. Trenfel shall continue to exercise the functions of General Manager of Toyota of El Cajon, and, that no changes in General Manager shall be made without the prior written approval of TOYOTA MOTOR DISTRIBUTORS, INC. and TOYOTA MOTOR SALES, U.S.A., INC.

...

35. In January 1987, George Trenfel began experiencing a deterioration in his health. Lorelei Trenfel's responsibilities increased regarding the operations of Tara. Upon her father's death on August 24, 1987, she was in complete control of the dealership.

36. At the time of George Trenfel's death, the documentation Toyota possessed indicated that Lorelei Trenfel was nominated as the successor DEALER-OWNER/GENERAL MANAGER of Tara.
37. In November 1987, Robert Weldon ("Weldon"), the General Manager for the Los Angeles Region of Toyota, visited Tara and met with Lorelei Trenfel. Weldon had the impression after leaving the meeting that the store was doing "okay". Profits were above the regional average; however, truck sales were down slightly.
38. Since the entire Los Angeles Region was down in truck sales in 1987, Weldon was not particularly concerned with Tara's performance in this area of the market.
39. Weldon was impressed with the morale of the store's employees. The people he met seemed committed to getting the job done and seemed to respond well to Lorelei Trenfel. Because of what he saw, Weldon was optimistic about the long range future of the store.

40. In late November 1987, Goldene Trenfel telephoned Weldon seeking his impression of the dealership, and her daughter's performance as General Manager. Weldon told Mrs. Trenfel he felt the dealership was doing fine, and that Lorelei Trenfel was doing a good job. Weldon told Mrs. Trenfel to call him at any time if she had any problems or questions about the dealership. At this time, Toyota was not in possession of documentation concerning the ownership status of Tara other than the Toyota Dealer Agreement and the "Nomination of Successor" form, nominating Lorelei as successor.

41. Tara's profitability for the second half of 1987 was three times above the national average. This trend appeared to continue through January 1988.

42. However, in December 1987, Mrs. Trenfel and Tara's C.P.A., Howard Silberman ("Silberman"), met with Carolyn R. Jamora ("Jamora") of Security Pacific Bank. Mrs. Trenfel discovered that Tara's checks were being written on insufficient funds, and the bank could not obtain the cooperation of Lorelei Trenfel or Tara's business manager, Joan West ("West"), to correct the situation.

43. By early 1988 Tara was also delinquent in making wholesale payoffs to Security Pacific Auto Finance ("SPAF"). A number of vehicles were being sold yet the dealership was not receiving its funds from the buyers. The results of this was that Tara could not pay SPAF, and was "out of trust" in excess of \$1,100,000.

44. Also by early 1988, C.P.A. Silberman brought to the attention of Mrs. Trenfel and Tara's attorney, Kevin Jasper ("Jasper") that Tara's financial situation was deteriorating. Mrs. Trenfel learned of the following:

- a) Tara was losing \$100,000 a month.
- b) Lorelei Trenfel's salary jumped from \$4,500 per month to \$15,000 per month (without deductions). In addition, Lorelei Trenfel had taken \$100,000 from her mother's personal property account as a bonus without Mrs. Trenfel's approval or knowledge.
- c) West had her compensation doubled with Lorelei Trenfel's consent, but without Mrs. Trenfel's authorization or knowledge. A \$30,000 bonus was also paid to West at the end of 1987 without Mrs. Trenfel's knowledge or approval.
- d) By March 1988, Tara was unable to pay its monthly rental obligation (\$31,525/month) to Mrs. Trenfel.
- e) Lorelei Trenfel hired her husband, Eric Neitzel, as "assistant general manager" contrary to her mother's specific instructions.

45. When Mrs. Trenfel attempted to inquire into these problems, Lorelei Trenfel told her mother to stay away from Toyota, the dealership, the bank, and "to mind her own business".

46. Monthly financial statements submitted to Toyota by Tara "overstated" the dealership's cash position to make it appear positive rather than negative.
47. The routine financial information submitted to Toyota by Tara indicated only that the profits had decreased because of a problem in Tara's expenditures. Weldon became concerned, and, when Lorelei Trenfel was contacted by a Toyota representative, she attributed the loss to a correctable problem in the expenditures account.
48. Regardless of the above-mentioned problems, Tara's owner satisfaction ratings improved during this time.

D. Occurrences In April of 1988

49. By letter of April 11, 1988, Weldon requested copies of the Trenfel trust documents and George Trenfel's will from Lorelei Trenfel and Mrs. Trenfel's attorney, Jasper. Lorelei Trenfel requested these documents from Jasper by letter of the same date.

50. On April 14, 1988, Lorelei Trenfel informed the Toyota District Manager, Marianne Richards ("Richards"), of Lorelei's suspicions that Bill Trenfel--angered at having been exiled to the smaller Mitsubishi dealership--was "trying to 'poison' their mother against her".
51. On April 15, 1988, Bill Trenfel, Mrs. Trenfel, and Jasper met in Jasper's office to discuss Mrs. Trenfel's concerns regarding the dealership. Mrs. Trenfel was worried about the financial position of the dealership, and the lack of cooperation from West and Lorelei Trenfel. It was decided at this meeting that West would be terminated. Mrs. Trenfel also indicated her desire to terminate Lorelei Trenfel as General Manager.
52. On April 18, 1988, Michael Cox, C.P.A., ("Cox") met with Bill Trenfel and Attorney Jasper at Bill Trenfel's Mitsubishi dealership. At this meeting the C.P.A. was hired to identify assets and review the books and records of Tara. Although Cox's firm commenced the data gathering operation on April 20, 1988, it was not formally retained until April 27.<sup>5</sup>

---

<sup>5/</sup> As the C.P.A work progressed, Cox's firm informed Mrs. Trenfel and her representatives of certain initial problems at the dealership: missing cars, missing books and records, unreconciled bank accounts, and questionable expenditures.

53. On the morning of April 19, 1988, Jasper telephoned Weldon and told him that Mrs. Trenfel wanted to fire Lorelei Trenfel as General Manager. Weldon asked Jasper why Mrs. Trenfel wanted to fire her daughter. Jasper did not disclose the reasons for termination, but instead asked Weldon to approve Bill Trenfel as General Manager. Weldon told Jasper that in Toyota's eyes, Bill Trenfel was not qualified as a General Manager. Weldon suggested that he, Jasper, and Mrs. Trenfel meet on April 21 to discuss the situation.

54. That same morning (April 19, 1988) Bill Trenfel met with Jim Warren ("Warren") the Business Center Director for SPAF. At this meeting Bill Trenfel advised Warren that he was replacing his sister as general manager and eventual principal of Tara.<sup>6</sup> Bill Trenfel also told Warren that he was going to dismiss West from her position at Tara, and that his mother could not allow the dealership to continue any further in its present condition. By virtue of this conversation, Warren noted that a major portion of the management team at Tara would be dismissed and replaced by individuals selected by Bill Trenfel.

---

<sup>6/</sup> Lorelei Trenfel was vacationing at this time in Bora-Bora. This trip, plus an earlier vacation in Florida, both of which had been taken without Mrs. Trenfel's prior knowledge and at a time when Tara was facing this financial crisis, further concerned Mrs. Trenfel.

55. That same morning (April 19, 1988) Bill Trenfel entered the Tara dealership with three armed police officers to terminate West's employment. Mrs. Trenfel and Bill Trenfel feared West's temper and did not want her taking or altering any business records. West left the premises without incident.<sup>7</sup>

56. Two sales managers were also terminated that morning by Bill Trenfel. He advised the remaining key personnel that there had been a change in management and asked whether they would have any problems working with him or his mother.

---

<sup>7/</sup> In making these findings, the deposition testimony of West in Case No. 598209 (Superior Court, San Diego County) has been considered as part of the record over Tara's objection. The evidence is recognized as hearsay, however admitted pursuant to Government Code section 11513(c).

57. Later that day, Weldon was informed that Toyota had received calls from some Tara employees describing the firing of West. Weldon called Jasper to inquire why Weldon had not been advised by Jasper in their earlier conversation that morning about West's dismissal. Weldon expressed particular concern about the manner in which the termination had been accomplished. Jasper indicated that Weldon had not been told of the plan to remove West because "he (Weldon) had not asked him". Weldon again asked the reasons for Lorelei Trenfel's dismissal and reiterated that he felt Bill Trenfel was not an acceptable replacement. Both men stressed the importance of the upcoming April 21, 1988, meeting.

58. By letter of April 19, 1988, Jasper wrote Weldon informing him that Mrs. Trenfel, as president of Trenfel Motors, Inc. (the general partner of Tara) intended to terminate Lorelei Trenfel as general manager and appoint Bill Trenfel in her place. The letter asked Toyota to expedite the approval process, but still gave no reasons for the termination of Lorelei Trenfel.

59. On April 21, 1988, a meeting was held in Toyota's offices in Newport Beach. Mrs. Trenfel, Bill Trenfel, Attorney Jasper, and C.P.A. Silberman appeared on behalf of Tara. Toyota's representatives included Weldon, Denise Beaudry, (an attorney for Toyota) and Alan DeCarr, Regional Market Representation Manager. Silberman and Bill Trenfel were

not permitted into the meeting room. Mrs. Trenfel and Jasper wanted only to discuss the approval of Bill Trenfel as general manager of Tara. Toyota's representatives refused to discuss the approval of Bill Trenfel becoming general manager because of his prior performance at Tara. Toyota wanted only to determine the ownership status of Tara as well as the reasons which supported Mrs. Trenfel's decision to terminate Lorelei.

60. Mrs. Trenfel explained to Weldon that the real reason for Bill's removal as general manager was due to George Trenfel's drinking problem rather than poor performance of Bill. Weldon informed Mrs. Trenfel that Toyota had no knowledge of any problem that George Trenfel may have had with alcohol. Weldon also informed her that Bill Trenfel was not acceptable because of his prior performance and because he could not devote enough of his time to the management of Tara to satisfy Toyota's requirements for a full-time manager. This was due to his ownership of El Cajon Mitsubishi.

61. Jasper and Weldon became argumentative at the meeting. Weldon did not believe that Mr. Trenfel had a problem with alcohol and became angry because he could not get answers to his questions about the ownership and control of Tara. Jasper declined to specify the grounds for replacing Lorelei Trenfel because of his concern about potential litigation among the Trenfel family members.

Weldon stated that Bill Trenfel was not approved as Tara's general manager. He was also very critical of the "spectacle" caused by the manner of West's termination. The parties discussed a possible sale of the dealership as well as the appointment of another general manager subject to Toyota's approval. Mrs. Trenfel did not wish to sell Tara because the dealership was in financial straits. Weldon was not optimistic about finding a qualified general manager in the near future. The meeting ended with Weldon suggesting that he would call the police if Jasper did not moderate his tone of voice, and requesting that Mrs. Trenfel and her attorney leave his office.

62. On the evening of April 21, 1988, after Lorelei Trenfel returned from Bora-Bora, Mrs. Trenfel met with Lorelei and unsuccessfully sought the latter's resignation.
63. By letter dated April 22, 1988, Mrs. Trenfel advised Lorelei Trenfel that she was relieved of her duties and responsibilities as Vice-President and Chief Financial Officer of Trenfel Motors, Inc., and as General Manager of Tara Motors. This letter was handed to Lorelei by Bill on April 22, 1988, at the dealership.

64. Bill had changed the locks on Lorelei's office door, refused her request to be allowed to enter her office, and invited her to discuss the matter privately in another office.
65. Apparently another employee of Tara with loyalties to Lorelei had forewarned Lorelei of the situation. This employee (who has since been fired by Bill Trenfel) had also arranged to have most of the dealership employees in the showroom to observe the confrontation between the siblings. Lorelei refused to adjourn to a more private area stating that she preferred to discuss the situation in front of everyone. Bill Trenfel instructed the employees to disperse and Lorelei left without further incident.
66. By a memorandum dated April 26, 1988, Weldon recommended to his superiors at Toyota that the Dealer Agreement with Tara be terminated.
67. By letter dated April 29, 1988, Toyota notified Tara that it was terminating Tara's Dealer Agreement.

E. Occurrences from May 1988 to Present

68. The report proposed by Cox, the C.P.A. was issued on May 12, 1988, and revealed the following problem areas in Tara's accounts:

- Dealership Bank accounts had not been reconciled since October, 1985.
- Cars were missing from the Tara inventory.
- The 1986 General Ledger and other records were missing, preventing a complete audit.
- The cash position at Tara was overstated by \$508,067.81 for the period ending March, 1988.
- Checks were taken as deposits on vehicles that were never sold. The checks were not returned to the customers. The checks were also never recorded in the books and records of Tara.
- The Finance Office records and the Business Office records did not reflect the same amount on accounts receivable.
- The General Ledger did not have a complete listing of receivables.
- Used cars were being sold, and the transaction was not recorded in the books or records. (This could present the opportunity for someone in the Used Car Department to keep personally the unrecorded money.)
- On two occasions, cars were sold to consumers, who were also presented with checks in the amount of Tara's profits on the sales. These transactions were reflected on the books as "zero" profit transactions.
- No record was being maintained as to who had demonstration vehicles, or on what date such vehicles were assigned.

- Checks were being paid from invoices that were not reconciled to accounts payable statements. Therefore, Tara never knew if it was getting what it paid for.
- A \$100,000 transfer from Mrs. Trenfel's personal properties account to Tara occurred in December of 1987.
- On October 20, 1987, Lorelei Trenfel wrote herself a bonus check for \$50,000. On November 20, 1987, Lorelei Trenfel wrote herself another bonus check for \$50,000. The usual withholdings were not taken from these checks.
- The October and November checks to Lorelei Trenfel did not go through the expense accounts of Tara. (Normally salaries and bonuses are expenses to be attributed as operating expenses).
- Lorelei Trenfel's bonuses were not reflected on her W-2 statements.
- West received two \$15,000 bonus checks for 1987. These checks were issued on November 5 and November 20, 1987.
- Certain adjustments did not go through the normal course of the books and records before being marked in the general ledger.

69. Cox summarized his audit findings as follows: The store was well capitalized, but "there was great room for improvement in the management of the dealership."

70. On May 27, 1988, Lorelei Trenfel filed suit against Tara, Mrs. Trenfel and Bill Trenfel in the Superior Court of California, County of San Diego, Case Number 599642. The complaint alleged breach of contract and 16 other causes of action arising out of her removal as Tara's General Manager. Tara, Mrs. Trenfel and Bill Trenfel subsequently cross-complained against Lorelei Trenfel for breach of fiduciary duties.

71. On July 6, 1988, West filed suit against Tara, Mrs. Trenfel and Bill Trenfel, in the Superior Court of California, County of San Diego, Case Number 598269. She also alleged breach of contract and various other causes of action arising out of her termination.
72. These suits and Toyota's termination notice have received publicity in a local San Diego newspaper. Two articles appeared in Automotive News (a national trade publication) regarding this dispute.
73. Bill Trenfel has been acting general manager of Tara under Mrs. Trenfel's supervision since April 19, 1988. He has initiated personnel changes, approved new compensation packages, created advertising programs and has had the day-to-day responsibility for running Tara as requested by Mrs. Trenfel.<sup>8</sup>

---

<sup>8/</sup> Bill Trenfel admitted that at the time of the hearing he had not been able to devote as much time to Tara as he needed to. Trenfel attributed his absences to the heavy involvement with this pending matter and related litigation. He further conceded that his involvement in his Mitsubishi store has impacted upon his time spent at Tara.

74. Tara's profits/losses compared to the L.A. Region from the time Bill Trenfel was appointed general manager in April 1988, were as stated below:

|              | <u>El Cajon<br/>NET P/L</u> | <u>TOTAL<br/>SALES</u> | <u>% OF<br/>TOTAL SALES</u> |
|--------------|-----------------------------|------------------------|-----------------------------|
| MAY          | (\$88,311)                  | \$2,672,032            |                             |
| JUNE         | (\$16,940)                  | \$3,009,166            |                             |
| JULY         | (\$46,231)                  | \$3,271,823            |                             |
| AUGUST       | (\$40,979)                  | \$3,048,117            |                             |
| SEPTEMBER    | (\$12,970)                  | \$2,912,557            |                             |
| <hr/>        |                             |                        |                             |
| 1988 TOTALS: | (\$112,969)                 | \$14,913,695           | -0.8%                       |

|              | <u>REGION<br/>NET P/L</u> | <u>TOTAL<br/>SALES</u> | <u>% OF<br/>TOTAL SALES</u> |
|--------------|---------------------------|------------------------|-----------------------------|
| MAY          | \$6,507,352               | \$232,614,910          |                             |
| JUNE         | \$2,868,306               | \$245,843,001          |                             |
| JULY         | \$5,313,443               | \$254,343,338          |                             |
| AUGUST       | \$3,912,336               | \$252,134,266          |                             |
| SEPTEMBER    | \$3,505,505               | \$217,906,482          |                             |
| <hr/>        |                           |                        |                             |
| 1988 TOTALS: | \$22,106,942              | \$1,202,841,997        | 1.8%                        |

75. The Dealership scores for Tara regarding its New Vehicle Sales and Dealer Service ("NVS & DS"), Truck Sales and Service ("TSS") and Owner Satisfaction Index ("OSI") for November, 1988, (year to date) are as follows:

|                    | <u>NVS&amp;DS</u> | <u>TSS</u> | <u>OSI</u> |
|--------------------|-------------------|------------|------------|
| Tara Dealership    | 90.6              | 88.4       | 87.6       |
| Los Angeles Region | 89.5              | 83.2       | 83.2       |
| National           | 89.0              | 83.6       | 83.6       |

76. C.P.A. Cox indicated in his summary of November 2, 1988, that Tara's business office appeared to be better organized than in April, 1988, and that the general condition of the books and records was good.

II. Facts Relating To The Amount Of Business Transacted By Tara, As Compared To The Business Available To It {Section 3061(a)}.

77. Toyota's decision to terminate its relationship with Tara was not based on poor sales performance by Tara.
78. The San Diego area is the fourth most populous in California and is growing at one of the fastest rates in the country. Import vehicles make up more than one-half of car sales and almost two-thirds of truck sales in this market.
79. Toyota's notice of termination was issued in April of 1988.
80. Tara's sales through October of 1988, as compared to sales in prior years are as follows:

A. RETAIL CARS

| <u>YEAR</u>     | <u>UNITS SOLD</u> | <u>% OF L.A. REGION</u> |
|-----------------|-------------------|-------------------------|
| 1984*           | 999               | 1.33%                   |
| 1985*           | 1019              | 1.27%                   |
| 1986            | 1380              | 1.66%                   |
| 1987            | 1348              | 1.63%                   |
| thru Oct. 1988* | 831               | 1.14%                   |

B. RETAIL TRUCKS

| <u>YEAR</u>     | <u>UNITS SOLD</u> | <u>% OF L.A. REGION</u> |
|-----------------|-------------------|-------------------------|
| 1984*           | 1296              | 2.72%                   |
| 1985*           | 1182              | 2.00%                   |
| 1986            | 1697              | 2.60%                   |
| 1987            | 1117              | 2.17%                   |
| thru Oct. 1988* | 769               | 1.95%                   |

C. FLEET TRUCKS

| <u>YEAR</u>     | <u>UNITS SOLD</u> | <u>% OF L.A.<br/>REGION</u> |
|-----------------|-------------------|-----------------------------|
| 1984*           | 11                | 0.14%                       |
| 1985*           | 26                | 0.29%                       |
| 1986            | 229               | 2.95%                       |
| 1987            | 131               | 1.87%                       |
| thru Oct. 1988* | 48                | 1.06%                       |

D. RETAIL TOTALS

| <u>YEAR</u>     | <u>UNITS SOLD</u> | <u>% OF L.A.<br/>REGION</u> |
|-----------------|-------------------|-----------------------------|
| 1984*           | 2295              | 1.87%                       |
| 1985*           | 2201              | 1.58%                       |
| 1986            | 3077              | 2.07%                       |
| 1987            | 2465              | 1.84%                       |
| thru Oct. 1988* | 1600              | 1.43%                       |

\* Indicates performance of Tara with Bill Trenfel as general manager. Bill Trenfel was general manager from 1981 until replaced by Lorelei Trenfel in March 1986. He in turn replaced Lorelei Trenfel in April 1988.

81. In 1987, of the eight Toyota dealerships in the San Diego district, Tara sold the most new vehicles. However through November 1988, Tara's rank ranged from 2nd to 5th in the district depending on the month. Tara's sales declined in excess of 25% for 1988 through November as compared to the comparable period for 1987. New car sales declined from 1243 to 915 and new truck sales declined from 1253 to 953. The combined total sales declined from 2496 to 1868. Tara has fallen from the sales leader position in 1987 to fifth place (a 20% decline) in 1988.

III. Facts Relating To The Investment Necessarily Made And Obligations Incurred By Tara To Perform Its Part Of The Franchise {Section 3061(b)}.

82. Toyota's decision to terminate the franchise of Tara was not based on a lack of investment by Tara.
83. Tara is located at 300 El Cajon Boulevard in El Cajon, California. The land which it occupies is owned by Mrs. Trenfel.
84. Tara has recently been remodeled to update its appearance in the competitive dealer market.
85. Since April 1988, Mrs. Trenfel has loaned approximately \$1,000,000 to the dealership.

IV. Facts Relating To Permanency Of Tara's Investment {Section 3061(c)}.

86. Toyota's decision to terminate Tara's franchise was not based on a lack of a permanent investment by Tara.
87. There was no other evidence presented on the permanency of the investment except for those findings made under section 3061(b).

V. Facts Relating To Whether It Is Injurious Or Beneficial To The Public Welfare For The Business Of Tara To Be Disrupted {Section 3061(d)}.

88. Toyota intends to open a new dealership in the general vicinity of Tara's location should Tara's protest be overruled by the Board and the termination permitted. Four or five qualified dealers have expressed interest in such a venture.

89. The following chart indicates the distances and drive times from Tara's location to the other seven Toyota dealerships in the San Diego district.

|                         | <u>Street Miles</u> | <u>Air Miles</u> | <u>Road Time (Minutes)</u> |
|-------------------------|---------------------|------------------|----------------------------|
| Lee White Toyota        | 7.5                 | 6.61             | 11                         |
| Rose Toyota             | 8.7                 | 7.47             | 12                         |
| Frank Toyota            | 15.0                | 12.34            | 22                         |
| Kearny Mesa Toyota      | 18.0                | 10.61            | 20                         |
| Toyota of Pacific Beach | 18.3                | 14.43            | 24                         |
| Cush Toyota             | 24.9                | 11.82            | 29                         |
| Toyota of Escondido     | 34.7                | 23.30            | 37                         |

90. It is possible that upon appointment, a replacement dealer could be operating out of a temporary facility within 30 days and permanent facilities obtained within a year.

VI. Facts Relating To Whether Tara Has Adequate Motor Vehicle Sales And Service Facilities, Equipment, Vehicle Parts, And Qualified Service Personnel To Reasonably Provide For The Needs Of The Consumers Of Toyota Vehicles And Has Been And Is Rendering Adequate Services To The Public {Section 3061(e)}.

91. Toyota's decision to terminate Tara's franchise was not due to the inadequacy of Tara's facilities, equipment, or service personnel. Nor was it based upon Tara's failure to render adequate services to the public.

92. Toyota has conceded that Tara has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the customers of Toyota vehicles and has been and is rendering adequate services to the public.

VII. Facts Relating To Whether Tara Has Failed To Fulfill The Warranty Obligations Of Toyota To Be Performed By Tara {Section 3061(f)}.

93. Toyota's decision to terminate Tara's franchise was not based on any failure of Tara to fulfill Toyota's warranty obligations.

94. Toyota has conceded that Tara has fulfilled Toyota's warranty obligations.

VIII. Facts Relating To The Extent Of Tara's Failure To Comply With The Terms Of The Franchise {Section 3061(g)}.

95. Toyota decision to terminate Tara's franchise was based upon the failure of Tara to comply with the terms of the franchise. The following conduct of Tara violated the terms of the franchise:

1. the removal of Lorelei Trenfel as general manager without prior approval,
2. the appointment of Bill Trenfel as general manager without the prior approval of Toyota and over Toyota's express objection, and
3. the dispute between Mrs. Trenfel and Lorelei Trenfel which resulted in the breakdown in the relationship between Toyota and Tara.<sup>9</sup>

---

<sup>9/</sup> The specific sections of the Dealer Agreement applicable are paragraphs IV, V, VI, X (3), XX B 2 (f), (g), and (h). These provisions are quoted at pages 14-16 supra.

96. Tara does not dispute that Lorelei Trenfel was terminated and that Bill Trenfel appointed as acting general manager without the prior written approval of Toyota.

97. Toyota's policy manual reflects the importance of management to the dealer-franchisor relationship:

Without proper management, even the most successful product is doomed to mediocrity at best and possible failure in the long term. The selection and qualifying of dealer candidates are of the utmost importance, not only in closing open points or bringing a Buy/Sell to completion, but also in the selection of general manager candidates. In both cases, only highly qualified candidates with a proven, successful background in the automobile business should be considered.

98. At the time Toyota issued its Notice of Termination, there was a dispute among George Trenfel's heirs concerning the successorship interest in Tara. Toyota had requested but did not receive the testamentary documentation which could clarify this dispute.

99. Further disruption of Tara's operations was exemplified by the termination of West, Lorelei Trenfel and other dealership personnel, and the assumption of responsibility by Bill Trenfel at a time when the successorship in Tara had yet to be clarified.

100. A primary objective of the Dealership Agreement is to promote consumer confidence and satisfaction. The parties acknowledged in the Dealer Agreement that the success of their relationship depends upon their mutual understanding, cooperation, trust, and confidence.

101. The circumstances surrounding the termination of Lorelei Trenfel, the firing of Joan West, and Tara's unwillingness to disclose the rationale for these decisions contributed to the erosion of understanding, cooperation, trust and confidence between Tara and Toyota.

102. Under the existing Dealer Agreement, Toyota recognized Lorelei as the General Manager and as the approved nominee to be the owner/successor of Tara. Toyota was justified in insisting upon being provided with documentation as to the status of the ownership and the reasons for removing Lorelei as General Manager. However, Toyota contributed to the breakdown of this relationship by its initial disapproval of Bill Trenfel as general manager, which decision was communicated to Tara's representatives during

the first telephone conference of April 19, 1988, before the parties had an opportunity to meet and before the full facts surrounding the dealership's history and Bill Trenfel's present circumstances were ascertained.<sup>10</sup>

103. Mrs. Trenfel's conduct in regard to her daughter and son was motivated by her desire to save the dealership.

---

10/ In a sense, both parties were "correct" in their assessment of events in April 1988:

Mrs. Trenfel realized that she must take prompt action to save the dealership; Weldon's initial rejection of Bill Trenfel as general manager was subsequently supported by the latter's involvement in West's firing and the information Weldon obtained from the Mitsubishi dealership. This hindsight, however, does not excuse the parties' contractual obligations under the Dealer Agreement. Indeed, it was the mutual distrust caused by the precipitous conduct of each side which preordained the demise of the April 21 meeting. Toyota's ultimate rejection of Bill Trenfel as general manager under those circumstances, and in light of the prior history of the dealership, was not unreasonable. Tara's improved performance during the period April through December 1988 does not alter this conclusion.

DETERMINATION OF ISSUES

- I. Toyota did not establish that the amount of business transacted by Tara was inadequate as compared to the business available to Tara {Section 3060(a)}.
  
- II. Toyota did not establish that Tara failed to maintain a material investment, or incur material obligations in the performance of its part of the franchise {Section 3061(b)}.
  
- III. Toyota did not establish that Tara's investment is not permanent {Section 3061(c)}.
  
- IV. Toyota has established that it would not be injurious to the public welfare if Tara's franchise were terminated {Section 3061(d)}.
  
- V. Toyota did not establish that Tara failed to have adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of consumers of Toyota vehicles and has not been rendering adequate services to the public {Section 3061(e)}.
  
- VI. Toyota did not establish that Tara failed to fulfill the warranty obligations of Toyota {Section 3061(f)}.

VII. Toyota has established that Tara has materially breached the following paragraphs of the Toyota Dealer Agreement:

Tara has violated paragraphs IV, V, VI, and X (3), by failing to obtain Toyota's written consent before replacing Lorelei Trenfel as general manager and installing Bill Trenfel as acting general manager.

Under the express provisions of the Dealer Agreement, termination is appropriate under the contract pursuant to paragraph XX B 2 (f) (a dispute existed among Tara's managers which adversely affected Toyota); paragraph XX B 2 (g) (Tara retained Bill Trenfel as general manager without Toyota's written approval, which approval was reasonably withheld by Toyota; paragraph XX B 2 (k) (Tara's breach of the additional provision naming Lorelei Trenfel as general manager).<sup>11</sup>

It is determined that Tara's material breach of the Toyota Dealer Agreement as described above constitutes good cause to permit Toyota to terminate the franchise of Tara.

---

<sup>11/</sup> Although replacement of a general manager without an ownership interest may not constitute grounds for termination under the Toyota Dealer Agreement (paragraph XX B 2 (b)), paragraph XX B 2 (k) makes it clear that termination would be appropriate for violation of the additional contractual provisions contained in paragraph X (2) and (3) (replacement of Lorelei Trenfel as general manager irrespective of ownership interest).

## DECISION

Tara has breached material terms of the Dealer Agreement and Toyota has established good cause for the termination of Tara's franchise. Although not condoning the manner and methods chosen by Mrs. Trenfel and her representatives, it is recognized that the dealership was failing by virtue of her daughter's conduct as general manager. Mrs. Trenfel's efforts were taken to preserve her and her deceased husband's 20-year investment.

In this context, the following proposed decision is respectfully submitted:

The protest is conditionally overruled.

Toyota shall not be permitted to terminate the franchise of Tara if the following conditions occur:

1. Tara, within six months of the date of this decision, appoints a general manager who shall first have been approved by Toyota.
  
2. Toyota shall not unreasonably withhold its approval of a person nominated by Tara to be the general manager. The approval review process of the person nominated shall be pursuant to the standard requirements of Toyota for such a position. Toyota shall not be obligated to consider William George Trenfel or

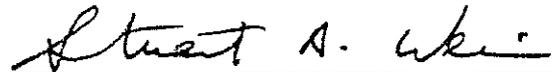
Lorelei Marie Trenfel as applicants for general manager.

3. Any dispute between Tara and Toyota as to the reasonableness of Toyota's approval or disapproval of any proposed general manager shall be subject to the jurisdiction of the Board. Any such dispute shall be brought before the Board for adjudication by written notice filed with the Board and served upon the opposing party no later than 30 days from the date of notice of the rejection received by Tara.
  
4. Any dispute as to the occurrence of any conditions or compliance with any of the terms of this order shall be subject to review and resolution by the Board.

5. If the above conditions do not occur within the time stated, the protest shall be deemed unconditionally overruled and Toyota shall be permitted to terminate the franchise of Tara.

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: April 14, 1989



---

STUART A. WEIN  
Administrative Law Judge  
New Motor Vehicle Board