



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: July 6, 2012

From : ADMINISTRATIVE LAW JUDGE: Lonnie M. Carlson

CASE: SANTA MONICA AUTO GROUP, dba SANTA MONICA INFINITI v. INFINITI WEST, a Division of NISSAN NORTH AMERICA, INC.
Protest No. PR-2330-12

TYPE: Vehicle Code section 3062 – establishment protest

PROCEDURE SUMMARY:

- PROTESTS FILED ON CALENDAR: March 29, 2012
- MOTIONS FILED: Respondent’s Motion to Dismiss Protest
- COUNSEL FOR PROTESTANT: Michael M. Sieving, Esq.
Tina Hopper, Esq.
Callahan Thompson Sherman & Caudill LLP
- COUNSEL FOR RESPONDENT: Maurice Sanchez, Esq.
Kevin M. Colton, Esq.
Baker & Hostetler LLP

EFFECT OF PROPOSED ORDER:

The Proposed Order would grant Respondent’s Motion to Dismiss Protest.

SUMMARY OF PROPOSED ORDER:

- The waiver agreement entered into by Infiniti and SMI was found to be enforceable because:
 - a. Although the Dealer Agreement contained an Integration clause, the same Agreement provided that the parties could amend it.
 - b. The Waiver Agreement was negotiated and signed by the parties simultaneously with the Dealer Agreement and found to be an amendment to the Dealer Agreement.
 - c. The Waiver Agreement dated September 24, 2010 was not barred by the application of Section 11713.3(g) which was effective January 1, 2012, because it does not “[a]ffect the enforceability of a provision in any contract entered into on or before December 31, 2011.”

- d. The Parole Evidence rule had no application as the Waiver Agreement was an amendment to the Dealer Agreement and the Dealer Agreement specified that the agreement could be amended.
- e. The Waiver Agreement was also not barred by Section 11713.3(g) because, consistent with the ruling in *DiamlerChrysler v. Lew Williams, Inc.*, the parties negotiated the amendment to the Dealer Agreement openly and fairly. Adequate consideration was given by Infiniti in conferring upon SMI its appointment as an Infiniti dealer in exchange for its promise not to protest Infiniti's express intention to establish another dealer in the Beverly Hills Open Point.
- f. Therefore, because the Waiver Agreement is enforceable and SMI agreed to waive its right to protest the establishment of an additional Infiniti dealership in the Beverly Hills Open Point, Infiniti's Motion to Dismiss SMI's protest is granted.

RELATED MATTERS:

- Related Case Law: None.
- Related Protest: A companion protest was also filed by *Glendale Nissan/Infiniti, Inc. dba Glendale Infiniti v. Nissan North America*, Protest No. PR-2331-12.
- Applicable Statutes: Vehicle Code section 3062, 3063, and 3066.