



STATE OF CALIFORNIA

DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: September 7, 2023

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: Let's Ride Motorsports Inc v. Textron Specialized Vehicles Inc. ("TSV")
Protest Nos. PR-2815-23

TYPE: Vehicle Code section 3060 Termination

PROCEDURAL SUMMARY:

- FILED ON CALENDAR: January 24, 2023
- MOTIONS FILED: Respondent's Motion to Dismiss Protest
- COUNSEL FOR PROTESTANT: Gavin M. Hughes, Esq.
Robert A. Mayville, Jr., Esq.
Law Offices of Gavin M. Hughes
- COUNSEL FOR RESPONDENT: Amy M. Toboco, Esq.
Paul T. Collins, Esq.
Patrick D. Quinn, Esq.
Nelson Mullins Riley & Scarborough LLP

EFFECT OF PROPOSED ORDER: The Proposed Order grants Respondent's Motion to Dismiss protest.

SUMMARY OF PROPOSED ORDER:

- Let's Ride, located in Bakersfield, is a franchisee of TSV and is authorized to sell E-Z-Go vehicles manufactured by TSV.
- TSV sent a Notice of Breach dated July 29, 2022, to Let's Ride. This was not a Notice of Termination ("NOT"). The Notice of Breach alleged Let's Ride was in

breach of several provisions of the franchise and stated that TSV would initiate termination of the franchise unless Let's Ride cured the breaches within 90 days of the date of the Notice of Breach. The 90-day cure period would expire on October 29, 2022.

- Thirty days after the 90-day cure period expired, TSV issued a 60-day notice of termination ("NOT") dated November 29, 2022. The NOT stated that Let's Ride had not cured the alleged breaches and that the franchise would terminate on January 30, 2023.
- The NOT complied with the provisions of Section 3060, including the statutorily required language in the notice that a protest must be filed within 30 days after receiving the NOT or within 30 days after the end of any appeal procedure provided by the franchisor or the protest right will be waived.
- TSV established that the NOT was received by Let's Ride on November 30, 2022 and by the Board on December 1, 2022. Using these dates, the 30-day time period for filing a protest would expire on January 3, 2023. Let's Ride's protest claimed that the NOT was received on or about December 15, 2022. This date would allow a protest to be timely if filed on or before January 16, 2023.
- Which date is correct is irrelevant as the protest was not filed until January 23, 2023, which is beyond 30 days from either November 30, 2022 or December 15, 2022.
- The protest, filed on January 23, 2023, alleged only that the NOT was received on or about December 15, 2022. There was no claim or even mention in the protest that the "90-day cure period" constituted an "appeal procedure provided by the franchisor."
- TSV filed its Motion to Dismiss on April 2, 2023. As there was still no claim that there was an "appeal procedure," the Motion to Dismiss alleged only that the protest was untimely as the protest had not been filed within 30 days of receipt of the NOT, regardless of which date the NOT was received.
- Let's Ride, on May 1, 2023, in its Opposition to the Motion to Dismiss, raised for the first time its claim that the 90-day cure period contained in the Notice of Breach was an "appeal procedure" provided by TSV, that the protest was timely as the cure period/appeal procedure had not ended when the protest was filed and that it has not ended even as of now. Let's Ride's claim that the cure period/appeal procedure had not ended was based upon its claim that Let's Ride believed the cure period would continue until TSV's representatives returned to the dealership to see if Let's Ride had accomplished the cures it claims had occurred. As TSV's representatives have not returned to the dealership, Let's Ride claims that the cure period/appeal procedure continues to exist.

- The ALJ found that the 90-day cure period in the Notice of Breach was not an appeal procedure and that even if it were the 90 days ended on October 29, 2022.
- The ALJ found that the protest, filed on January 24, 2023, was not timely as:
 - There is no appeal procedure contained in the franchise;
 - The 90-day cure period contained in the July 29, 2022 Notice of Breach was not an appeal procedure provided by the franchisor;
 - Even if it were an appeal procedure, the 90-day cure period expired on October 29, 2022, and the protest was not filed until January 24, 2023;
 - The NOT was received by Let's Ride on November 30, 2022;
 - Let's Ride had until January 3, 2023 to file a timely protest;
 - The protest, filed on January 24, 2023, was not timely filed; thus
 - The Board is not empowered to consider the protest.
- The ALJ recommends that TSV's Motion to Dismiss be granted and that the protest be dismissed with prejudice.

RELATED MATTERS:

- Related Case Law: None.
- Applicable Statutes and Regulations: Government Code section 11425.60; Uniform Commercial Code section 1202; Vehicle Code sections 331, 331.1, 331.2, 3050, 3060;