



STATE OF CALIFORNIA

DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: November 27, 2023

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: SORAYA, INC., DBA AUTO GALLERY MITSUBISHI - MURRIETA v. MITSUBISHI MOTORS NORTH AMERICA, INC.
Protest No. PR-2819-23

TYPE: Vehicle Code section 3060 termination

PROCEDURAL SUMMARY:

- FILED ON CALENDAR: April 20, 2023
- MOTIONS FILED: Respondent's Motion to Dismiss or, in the Alternative, for Summary Adjudication
- COUNSEL FOR PROTESTANT: Gavin M. Hughes, Esq.
Robert A. Mayville, Jr., Esq.
Law Offices of Gavin M. Hughes
- COUNSEL FOR RESPONDENT: Dean A. Martoccia, Esq.
Brandon L. Bigelow, Esq.
William F. Benson, Esq.
Seyfarth Shaw LLP

EFFECT OF PROPOSED ORDER:

The Proposed Order grants Respondent's Motion to Dismiss or, in the Alternative, for Summary Adjudication. The Proposed Order would dismiss the protest with prejudice.

SUMMARY OF PROPOSED ORDER:

- Protestant, Soraya, Inc., dba Auto Gallery Mitsubishi – Murrieta (Auto Gallery

Mitsubishi), has two Mitsubishi dealerships operating under separate franchises with Mitsubishi Motors North America, Inc. (MMNA). The dealership that is the subject of this termination protest is located in Murrieta and the other is located in Corona. In addition to this termination protest, there are also two warranty protests pending before the New Motor Vehicle Board (Board). However, the only matter presently before the Board is the termination protest pertaining to the Murrieta location.

- Auto Gallery Mitsubishi argued in its brief that the warranty protests were being resolved, so it began what it called “winding down” the Murrieta dealership and ceased all operations at the Murrieta dealership in February 2023.
- Auto Gallery Mitsubishi sold no Mitsubishi vehicles from the Murrieta dealership in February or March 2023 and disabled its website and Facebook page.
- MMNA personnel confirmed that the dealership had been closed for at least 7 consecutive business days, that it was vacant and that there was a sign posted stating that the property was “Available.”
- On April 19, 2023, MMNA provided a 15-day notice of termination to Auto Gallery Mitsubishi that its Murrieta franchise would be terminated. A timely protest was filed on April 20, 2023.
- On June 23, 2023, MMNA filed a “Motion to Dismiss or, in the Alternative, for Summary Adjudication.”
- The ALJ found that it was undisputed that:
 - The Murrieta dealership had been closed since February 2023;
 - No new vehicle sales had been made since some time before February 2023;
 - No warranty service had occurred since January 18, 2023;
 - All Mitsubishi vehicles had been transferred to Auto Gallery Mitsubishi’s dealership in Corona;
 - All employees were relocated to Corona;
 - The Murrieta dealership lost its flooring line as of April 18, 2023;
 - The real estate was sold to a third party in May 2023.
- Although Auto Gallery Mitsubishi alleged that it was ready and able to resume operations on a temporary basis pending approval of a proposed buy-sell of the dealership, nothing was submitted to establish this was feasible or could occur.
- The ALJ determined that MMNA was not responsible for the closure of the dealership; that the loss of the dealership had already occurred prior to the notice from MMNA of termination of the franchise; and that there was no basis for sustaining the protest given the existing circumstances of the closure of the dealership.

- Sustaining the protest would mean only that the franchise (the written agreement) could not be terminated but would not result in the Auto Gallery Mitsubishi dealership in Murrieta reopening. The loss of the dealership had already occurred prior to the notice of termination of the written agreement. No order of the Board sustaining the protest would prevent or ameliorate the effects of the loss of the dealership that had already occurred.
- Taking into account the existing circumstances, including the statutorily specified “good cause factors,” results in the conclusion that, as a matter of law, MMNA has established good cause exists to allow termination of the franchise (the written agreement).

RELATED MATTERS:

- Related Case Law: *Duarte & Witting, Inc. v. New Motor Vehicle Bd.* (2002) 104 Cal.App.4th 626
- Applicable Statutes and Regulations: Vehicle Code sections 331, 331.1, 331.2, 3050, 3060, 3061; Government Code Section 11425.60, 11445.10 - 11445.40