

1 NEW MOTOR VEHICLE BOARD  
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CERTIFIED MAIL

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7 STATE OF CALIFORNIA  
8 NEW MOTOR VEHICLE BOARD

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10 In the Matter of the Appeal of: )  
11 FAIRWAY LINCOLN-MERCURY, INC., dba ) APPEAL NO. A-119-90  
FAIRWAY LINCOLN-MERCURY, )  
12 )  
Appellant, )  
13 ) FINAL ORDER  
vs. )  
14 )  
DEPARTMENT OF MOTOR VEHICLES, )  
15 )  
Respondent. )  
16 )

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18 TO: John D. McGuire, Esq.  
Attorney for Appellant  
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21  
Marilyn Schaff, Esq.  
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Attorneys for Respondent  
24 Department of Motor Vehicles  
Legal Office  
25 P.O. Box 932382  
Sacramento, California 94232-3820

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1 On September 21, 1990, the New Motor Vehicle Board met and  
2 considered the above-entitled matter. After considering the  
3 administrative record and the briefs and arguments of counsel  
4 for the parties, it was determined by the Board that the  
5 Findings of Fact of the Department of Motor Vehicles, as  
6 contained in the Director's Decision dated February 28, 1990,  
7 which pertain to violations of Title 13, California Code of  
8 Regulations section 403.02(b), are not supported by the weight  
9 of the evidence. Accordingly, the Director's Decision is  
10 amended as follows:

11 A. Finding of Fact number 5 is deleted and the following  
12 is substituted therefor:

13 5. Each of the vehicles listed as items number 2 through  
14 7, 10, 12 and 13 of schedule A attached to the Accusation  
15 had been used as a commercial rental vehicle before it was  
purchased by Respondent.

16 There was insufficient clear and convincing evidence  
17 presented to establish to a reasonable certainty that  
Respondent had actual knowledge that the vehicles were  
18 former rental vehicles.

19 B. Determination of Issues number 2 is deleted.

20 C. The Order of the Department is amended to provide for  
21 a license suspension for a period of seven (7) days; provided,  
22 however, that six (6) days of said suspension are stayed for a  
23 period of two (2) years subject to the following terms and  
conditions:

24 1. Respondent's license shall be suspended for one (1)  
25 day.

26 2. Respondent is subject to the terms and conditions as  
27 set forth in paragraphs B through G, inclusive, of the  
Director's Decision.  
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1           It was the consensus of the members of the Board that the  
2 types of violations at issue in this matter are those for which  
3 the individual salespersons involved should have been subject to  
4 discipline.

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6 DATED: 10.2.90

NEW MOTOR VEHICLE BOARD

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8 By 

MANNING J. POST  
Vice-President  
New Motor Vehicle Board

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27 A.A. Pierce, Director, DMV  
John Lancara, Acting Program Manager  
28 Occupational Licensing, DMV