

STATE OF CALIFORNIA

NEW CAR DEALERS POLICY & APPEALS BOARD

In the Matter of)	
)	
RALPH'S CHRYSLER PLYMOUTH,)	Case No. A-3-69
A California Corporation,)	
)	Filed and Served:
Appellant,)	April 24, 1970
)	
vs.)	
)	
DEPARTMENT OF MOTOR VEHICLES)	
)	
Respondent.)	

Time and Place of Hearing: March 25, 1970, 9:00 A.M.
3500 South Hope Street
Los Angeles, California

For Appellant: Linder, Schurmer, Drane and Bullis
By: Milton Linder and
Scott Schurmer
Attorneys at Law
9107 Wilshire Boulevard
Beverly Hills, CA 90210

For Respondent: Honorable Thomas Lynch
Attorney General
By: Michael J. Smolen
Deputy Attorney General

FINAL ORDER

In the decision ordered July 2, 1969, by the Director of Motor Vehicles pursuant to Chapter 5, Part 1, Division 3, Title 2 of the Government Code, it was found that appellant:

(1) Entered into conditional sale contracts for the purchase of motor vehicles in 16 instances without including in a single document all of the agreements of the buyer and seller with respect to the total cost and terms of the payment of the motor vehicles; (2) wrongfully and unlawfully failed in 78

instances to mail or deliver to respondent the report of sale of used vehicles together with such other documents and fees required to transfer the registration of the vehicles within the 20-day period allowed by law; (3) wrongfully and unlawfully failed in 23 instances to properly endorse, date and deliver, the certificates of ownership of vehicles to the transferees within a reasonable time after the sale of the vehicles; (4) delivered, following a sale, a vehicle for operation on California highways which did not have all equipment required by law; and (5) in 2 instances, included as an added cost to the selling price of the vehicles, registration fees in excess of the fees due and paid to the state.

With reference to the finding that appellant did not include in a single document all of the agreements of the buyer and seller with respect to the total cost and terms of payment of the vehicles, it was found that the law on this issue was confused and subject to many interpretations; appellant's practice in this regard was the same as that prevailing in California at the time; the standard printed conditional sale contract form used by appellant contained no spaces to reflect information concerning side loans and appellant relied on advice of counsel in following the prevailing custom and practice.

It was further found that (1) in most of the cases involving late reporting, appellant failed to meet the time requirements for submitting reports of sales, titling documents and fees,

because the vehicles were sold before appellant obtained the documents of title from the previous legal owner; (2) appellant has two full time employees whose sole function and responsibility are to expedite the timely processing of necessary documents to the respondent when sales are made; (3) the "DMV" section of appellant's business is well organized and operated; (4) the sale of a vehicle not having seat belts was an inadvertant oversight; and (5) in both cases, the overcharges for fees due the state were unintentional and the sums were refunded to the buyers.

The penalty imposed by the respondent suspended appellant's license, certificate and special plates for a period of 15 days; stayed the execution of the suspension order and placed the appellant on probation for one year under the condition that it obey all the laws of the State of California and all regulations of the Department of Motor Vehicles governing the exercise of its privileges as a licensee. It was further ordered that the Director of Motor Vehicles may, during the probationary period, in his discretion, without a hearing, but upon reliable evidence, revoke the probation and order the suspension of the license. If appellant fully complies with all terms and conditions of probation, the stay of the order of suspension shall become permanent upon the expiration of the term of probation.

An appeal was filed with this Board pursuant to Chapter 5, Division 2 of the Vehicle Code. For reasons hereinafter stated

we affirm the decision in part, reverse in part and modify the penalty.

I. DID APPELLANT VIOLATE SECTION 2982(a) CIVIL CODE ^{1/} BY FAILING TO INCLUDE IN THE CONDITIONAL SALE CONTRACT A LOAN AGREEMENT ENTERED INTO BETWEEN THE BUYER AND AN INDEPENDENT LOAN COMPANY FOR THE PURPOSE OF MAKING THE DOWN PAYMENT?

We passed on this question in Holiday Ford vs. Department of Motor Vehicles A-1-69 and answered it in the negative.

Respondent urges us to reconsider our prior holding. Most of the arguments advanced to support the theory that Section 2982(a) Civil Code requires the inclusion of the side-loan agreement in the conditional sale contract are discussed in Holiday Ford, supra, and, therefore, require no elaboration. We will, however, comment on two of the arguments.

Respondent calls our attention to the Assembly Interim Committee on Finance and Insurance, Final Report, December 1960. It quotes from Page 19 to show that the committee was aware that buyers of cars do not always realize they are obligating themselves to make two payments each month, or at some other interval of time; i.e., one on the loan obtained to make the down payment (side-loan) and the other pursuant to the conditional sale contract. Although the committee heard testimony on this issue, there was no finding in the report,

^{1/} The events with which we are concerned occurred prior to the enactment of Section 2982.5 of the Civil Code which specifically provides for the inclusion in the conditional sale contract of data concerning side-loans which the seller assists the buyer to obtain. In this regard the Legislature specifically provided that the enactment of Section 2982.5 "shall not give rise to any inference that conduct to which it relates...was legal or illegal prior" to its effective date. (Ch. 979, Stats. 1968.)

that side-loans should be reflected in the conditional sale contract. Accordingly, the report does not support respondent's position.

Respondent argues that appellant "arranged", as distinguished from "assisted", the side-loans for the down payments. We find it unnecessary to determine the degree of involvement of the appellant in the side-loan transaction, because the side-loan agreement was not entered into by either the appellant and the buyer, or the appellant and the loan company; i.e., appellant was not a party to the side-loan agreement. The finding of the Director at Page 2, Paragraph III of the Decision, negates the theory that the buyers obligated themselves to appellant for the side-loans. The hearing officer, by implication, found that the buyers were not obligated to enter into a side-loan agreement with anyone at the time of the sale. The sale of the vehicle, in each case, occurred before the side-loan documents were executed by the buyer. The loans were independently contracted by the buyer with a third party; whether the appellant "assisted" the buyer in this regard or "arranged" for the loan is immaterial.

We find that the respondent has proceeded in a manner contrary to law with reference to its finding that appellant violated Section 2982(a) Civil Code as to each of the vehicles described as Items 1, 2, 5 through 18 in Exhibit A, attached to the accusation.

II. DID APPELLANT VIOLATE SECTIONS 4456 AND 5753 V.C. BY FAILING TO TIMELY SUBMIT REPORTS OF SALE TO THE DEPARTMENT OF MOTOR VEHICLES?

Commencing at Page 36 of its Opening Brief, appellant advances the propositions that: (1) Section 4456 V.C. was not violated because that statute requires a dealer to submit to the Department of Motor Vehicles, within 20 days for used cars, only fees due for registration and the Department of Motor Vehicles did not prove that appellant failed to timely submit such fees; (2) the context and wording of Section 4456 V.C. contemplate violations of that statute; and (3) there were many mitigating circumstances. Appellant concedes that disciplinary action can flow from violations of Section 4456 V.C. but argues that penalties should be reserved for situations where there has been neglect or intentional non-compliance with that section.

During oral argument, appellant abandoned the theory that Section 4456 V.C. required only the timely submission of registration fees and penalties.

Appellant's contention that violations of Section 4456 V.C. should be used for disciplinary action against a license only when there has been neglect or intentional non-compliance is based on the fact that section has a built-in penalty; i.e., \$3.00 assessment for each late report of sale.

We do not agree with this contention. It is our opinion that violations of Section 4456 V.C. are a proper basis for disciplinary action when the licensee conducts his business

in such a way that he fails to abide by that section and implementing regulations. In *Bill Ellis, Inc. vs. Department of Motor Vehicles A-2-69* we said at page 12:

"We cannot believe that the Legislature would vest in respondent the power to close the doors of a dealership, with all its economic ramifications, unless the Legislature was firmly of the opinion that compelling dealers to meet the reporting requirements is indispensable to the orderly management of documents related to the ownership of motor vehicles and that such management is a matter of importance to the public welfare."

Appellant's argument that a dealer should be immune from administrative disciplinary action for violation of Section 4456 V.C. and implementing regulations, absent neglect or willful non-compliance, does violence to the legislative scheme created for the express purpose of assuring that documents of title to motor vehicles are handled in an orderly manner to the end that transfers of ownership of motor vehicles become a matter of public record in a reasonable time.

Appellant concedes (Page 62, Lines 1 through 18 of its opening brief) that evidence of mitigating circumstances was admitted during the hearing. That evidence was given due consideration by the hearing office and the Director of Motor Vehicles in deciding upon the issues and penalties, as indicated in Paragraph VII, Page 3, and Paragraph IV, Page 6, of the Decision. Just as was true in *Fletcher Chevrolet vs. Department of Motor Vehicles A-4-69*, Pages 4 to 10, the alleged mitigating circumstances here were more of an explanatory

than exculpatory nature.

The respondent found that appellant also violated Section 5753 V.C. in 23 of those transactions wherein it was found that Section 4456 V.C. had been violated. Respondent took the position that Section 4456 V.C. is violated when, in the case of the sale of a used car by a dealer, fees and appropriate documents are not forwarded to the Department of Motor Vehicles within twenty days, and that Section 5753 V.C. is also violated when such fees and documents are not forwarded to DMV within a "...reasonable time..." after the sale. Respondent apparently construes a reasonable time to be anytime within 30 days from the date of sale (which, it occurs to us, is a view that is patently inconsistent with the Legislature's mandate of twenty days under Section 4456 V.C.)

We do not believe it is necessary to decide whether respondent's construction of Section 5753 V.C., as it read at the time with which we are concerned, is correct or erroneous because the applicability of that statute is of no significance in this case.

Clearly Section 4456 V.C. was violated when appellant failed to forward fees and appropriate documents to DMV within twenty days from the date of sale. The passage of ten or more additional days aggravated the violation. The application of Section 5753 V.C. can do nothing to add or detract from appellant's misconduct. It is our view that the evidence relating to the length of delay in paying fees and

submitting documents is a matter which is properly considered when determining severity of penalty for appellant's violation of Section 4456 V.C. and that the department's findings regarding violation of Section 5753 V.C. are, at worst, harmless surplusage.

III. DID APPELLANT VIOLATE SECTION 11713(i) V.C. BY SELLING A VEHICLE THAT DID NOT HAVE SAFETY BELTS AT THE TIME OF DELIVERY?

Appellant objects to the Director's finding that it violated Section 11713(i) V.C. by selling a vehicle which did not have attached thereto required equipment, namely, seat belts, first, on the ground that there was a failure of proof and, secondly, that if a violation was established, it did not justify a penalty, in view of the large number of cars appellant sells and the degree of care appellant exerts to assure that all vehicles it sells have all of the requisite equipment.

Respondent's direct evidence of the violation was in the form of an affidavit from the buyer, which established the absence of the seat belts at the time the vehicle was delivered. The evidence offered by the appellant did not directly controvert the affidavit, and, although the buyer was produced for cross examination, appellant did not question the witness concerning the direct statement in the affidavit. The preponderance of the evidence supports the Director's finding. We, therefore, affirm the finding that seat belts were not attached to the

vehicle at the time of delivery. We are mindful of the somewhat de minimis^{2/} nature of the violation, in view of appellant's volume of sales, and have given appellant's second point due consideration in passing upon the matter of penalty.

IV. DID APPELLANT VIOLATE SECTION 11713(h) V.C. (NOW SECTION 11713(g) V.C.) BY INCLUDING, AS AN ADDED COST TO THE SELLING PRICE OF VEHICLES, REGISTRATION FEES IN EXCESS OF THOSE DUE AND PAID THE STATE?

The respondent found that appellant had charged purchasers of vehicles, on two occasions, registration fees in excess of the amount required by law. The total overcharge amounted to \$7.00. It was also found that the overcharges were unintentional. The evidence disclosed that, in both instances, the purchaser was reimbursed; in one case, before the accusation was filed and in the other, after the filing of the accusation.

During the proceedings before the Department of Motor Vehicles, and before this Board, counsel for the parties treated the vehicles involved in these two transactions as used vehicles. Appellant argued on appeal that a dealer, in the sale of a used car, can only make an estimate of the fees due the state and, therefore, should not be held to have violated Section 11713(h) V.C. when its estimate is not the precise amount determined by the Department.

The purchasers of the vehicles giving rise to the overcharges were William F. or Nannie M. Long (Department's

^{2/} We should observe here that no one would have scoffed at this violation had the buyer been injured in an accident because of the absence of the belts.

Exhibit 5) and Louis Emmett or Maurine Theresa Prince (Department's Exhibit 17). Appellant certified to the Department of Motor Vehicles under penalty of perjury that both vehicles were sold to the purchasers as new (See Application For Registration For New Vehicles Nos. 0711716 and 0711960). The arguments by counsel concerning the need for dealers to make an estimate of fees following the sale of a used car were inapplicable.

Appellant further contends that, should this Board hold that appellant did charge for registration fees in excess of the amounts due the state, as respondent found, the mitigating circumstances are overwhelming. We find that appellant did violate, in two instances, Section 11713(h) V.C. In giving consideration to the penalty, we are mindful of the facts, as found by the Director, that the overcharges were unintentional, that the sums were refunded, and that the total amount involved was \$7.00.

V. DOES THAT PORTION OF THE PENALTY THAT PERMITS THE DIRECTOR OF MOTOR VEHICLES TO VACATE HIS STAY ORDER AND IMPOSE THE SUSPENSION UPON RELIABLE EVIDENCE AND WITHOUT GIVING APPELLANT NOTICE AND OPPORTUNITY TO BE HEARD PRIOR TO TAKING SUCH ACTION VIOLATE DUE PROCESS OF LAW?

This Board has reviewed this question on two previous occasions (Bill Ellis, Inc., supra, and Fletcher Chevrolet, Inc., supra) and answered it in the negative. Appellant argues that that portion of the penalty authorizing the Director to vacate the stay order and impose the order of

suspension without giving appellant notice and an opportunity to be heard violates due process of law because appellant is left at the caprice and whim of the Department of Motor Vehicles and an administrative action which is arbitrary, oppressive or unjust must be struck down as a violation of due process.

This Board will not assume that the Director of Motor Vehicles will execute his duties or exercise his discretion in a capricious or whimsical manner. It is significant that the Director has imposed limitations upon his powers to vacate the stay order. Before vacating that order, he must find further cause for disciplinary action, and, before he can find such cause, he must have reliable evidence. As we said in *Bill Ellis, Inc.*, supra, at Pages 14 and 15:

"Moreover the director is not required to vacate the stay order, even though he finds cause for doing so, but he may do so. These limitations, self-imposed by the director, contemplate an orderly and conscientious examination of the evidence brought to his attention before making any determination with reference to vacating the stay order."

Appellant does not contend that the Director was without power to impose a suspension in this case without also granting a stay order. Section 11705 V.C. clearly confers such power.

"It follows that the Director has the authority to temper the exercise of that power by granting probation and imposing reasonable conditions without affording the appellant further notice and hearing should he find a violation of those conditions to have occurred."
(*Bill Ellis, Inc.*, supra, Page 11.)

Should the Director subsequently act in a manner which constitutes an abuse of discretion, we are confident that appellant has available an adequate remedy.

We conclude that the conditions of probation imposed in this case do not invade appellant's constitutional rights.

VI. WHAT PENALTY IS APPROPRIATE TO THE FINDINGS OF THE DIRECTOR AS MODIFIED BY THIS BOARD?

In *Bill Ellis, Inc.*, supra, commencing at Page 4, we discussed in some detail the power vested in us to review penalty. Section 3055 V.C. authorizes this Board to refix penalty following reversal of one or more of the findings of the respondent. Section 3054(f) V.C. authorizes us to refix penalty where we do not disturb the findings but believe the penalty not to be commensurate with such findings.

The Board has reversed respondent on the finding that appellant violated Section 2982(a) of the Civil Code on 16 occasions. We are, therefore, called upon to review and refix appellant's penalty pursuant to Section 3055 V.C. Pursuant to Section 3054(f) V.C., we also take into consideration the mitigating circumstances found by the hearing officer, the de minimis nature of some of the violations, and our conclusions with respect to the finding of violations of Section 5753 V. C.

Pursuant to Sections 3054(f) and 3055 Vehicle Code, the New Car Dealers Policy & Appeals Board amends the decision of the Director of Motor Vehicles as follows:

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. That the dealer's license, certificate and special plates, heretofore issued to appellant, Ralph's Chrysler-Plymouth, a California corporation, be and the same are hereby suspended for a period of five (5) days; provided, however, that the effectiveness of said order of suspension shall be stayed for a period of one (1) year from the effective date of this decision, during which time the appellant shall be placed on probation to the Director of Motor Vehicles of the State of California upon the following terms and conditions:

(a) That appellant shall obey all the laws of the State of California and all rules and regulations of the Department of Motor Vehicles governing the exercise of its privileges as a licensee.

2. Should the Director of Motor Vehicles at any time during the existence of said probationary period determine upon reliable evidence that appellant has violated any of the terms and conditions of probation, he may in his discretion (and without hearing,) revoke said probation and order the suspension of appellant's license as hereinabove set forth; otherwise, upon full compliance by appellant with all the terms and conditions of probation set forth and upon the expiration of the term of probation, said stay of said order of suspension shall become permanent.

WARREN BIGGS, President

AUDREY B. JONES, Vice President

PASCAL B. DILDAY

RALPH L. INGLIS

MELECIO H. JACABAN

ROBERT B. KUTZ

ROBERT D. NESEN

WINFIELD J. TUTTLE

Ralph's Chrysler Plymouth vs. Department of Motor Vehicles

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