

2415 First Avenue  
P. O. Box 1828  
Sacramento, CA 95809  
(916) 445-1888

STATE OF CALIFORNIA

NEW CAR DEALERS POLICY & APPEALS BOARD

In the Matter of	)	
	)	
STOCKTON DODGE, INC.,	)	
A Delaware Corporation,	)	
	)	
Appellant,	)	Appeal No. A-38-73
	)	
vs.	)	Filed: September 5, 1973
	)	
DEPARTMENT OF MOTOR VEHICLES	)	
OF THE STATE OF CALIFORNIA,	)	
	)	
Respondent.	)	

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Time and Place of Hearing: August 8, 1973, 10:00 a.m.  
Auditorium, DMV  
2570 - 24th Street  
Sacramento, CA 95818

For Appellant: Kenneth Ferguson  
Attorney at Law  
Ferguson, Dedekam & Barrows  
225 East Channel Street  
Stockton, CA 95202

For Respondent: R. R. Rauschert, Legal Adviser  
Department of Motor Vehicles  
By: Henry J. Ahler  
Legal Counsel

FINAL ORDER

The appropriateness of the penalty imposed by the Director of Motor Vehicles is the only issue this appeal presents for

our consideration.

Proceeding via the Administrative Procedure Act (Section 11500 et seq. Government Code), the director found that Stockton Dodge, Inc., hereinafter referred to as "appellant", had: (1) failed in 7 instances to give written notice to the department within three days after transfer of vehicles; (2) failed in 82 instances to mail or deliver reports of sale (with documents and fees) to the department within 20 days; (3) failed in 6 instances to mail or deliver reports of sale (with documents and fees) to the department within 30 days; and (4) in 28 instances, charged purchasers of vehicles excessive registration fees.

The director imposed a penalty of 10 days' suspension, with 9 days stayed for a one year probation period on condition that appellant obey all laws of the United States, the State of California and its political subdivisions and obey all rules and regulations of the Department of Motor Vehicles.

Appellant does not dispute the findings of the director but bases his appeal solely on the grounds that the penalty is not commensurate with the findings, suggesting that probation alone would be more than adequate.

IS THE PENALTY IMPOSED BY THE DIRECTOR OF MOTOR VEHICLES  
COMMENSURATE WITH HIS FINDINGS?

The operative facts presented by the appellant at the

administrative hearing, and which formed the basis for his brief and argument on appeal, is, in essence, as follows:

The current president of appellant, Mr. Byington, took ownership of the corporation on January 1, 1971. One of the employees he retained at that time was the girl assigned to do Department of Motor Vehicles work. The girl proved inefficient and her employment was terminated in May 1971. Subsequently, during the next five months two other girls were employed but had to be replaced as they proved unsatisfactory. The girls he replaced, working with the old "bundle" forms, either overlooked or ignored overcharges. He also had to replace his office manager who was incompetent. On October 1971 he employed a Mrs. Forment who is still employed and who instituted procedures to insure that refunds are made immediately upon identification and on almost a daily basis. Disagreements over the proper computation of fees were encountered with the Department of Motor Vehicles resulting in numerous resubmissions. Penalties for being late were paid. In several instances, reports of sale were not returned by the department for correction until it was too late to comply with timely reporting requirements. Refunds have been made; the violations were the result of "honest mistake" with no intent to defraud; and Mr. Byington understands that appellant corporation was responsible for the

acts of its employees.

No useful purpose would be served to set forth all of the department's evidence as the Findings of Fact are not in dispute. However, of importance is evidence introduced by the department in the form of a letter dated April 15, 1971. This letter advised appellant that the department had become cognizant of 18 infractions which occurred during the period November 23, 1970, to April 12, 1971. The letter suggested that corrective measures be taken and advised that another review would be made in the near future.

The crux of the problem now is whether the mitigation presented by the appellant is sufficient to move this board to modify the penalty as imposed by the director.

While the evidence in mitigation is strong, it is significantly offset by the department's letter of April 15, 1971. Recognizing that appellant only took over the corporation on January 1, 1971, nevertheless, approximately three months thereafter he was put on notice that violations had been occurring, was advised to take corrective measures and that there would be another review. In these circumstances, it was incumbent on appellant to act with the highest degree of concern to assure compliance with the requirements of the Vehicle Code. Examination of department's Exhibit A to the accusation reveals that

approximately 105 of the 112 transactions from which the violations were generated occurred after April 15, with most occurring during the last six months of the year. Appellant had sufficient warning and time to set its house in order, at least for the latter part of the year.

In our view, the degree of "scrupulous" and "responsible" conduct required of dealers was not met by the appellant (cf. Diener Motors vs. Department of Motor Vehicles, A-15-71; Pomona Valley Datsun vs. Department of Motor Vehicles, A-31-72). Accordingly, we find the penalty imposed by the director to be entirely fair and commensurate with the findings.

The Decision of the Director of Motor Vehicles is affirmed in its entirety.

This final order shall become effective September 21, 1973.

PASCAL B. DILDAY

JOHN ONESIAN

GILBERT D. ASHCOM

WINFIELD J. TUTTLE

MELECIO H. JACABAN

DISSENT

We dissent in part. While we affirm the Decision of the Director of Motor Vehicles imposing a penalty of 10 days' suspension with a period of one years' probation, we would stay the suspension in its entirety.

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W. H. "HAL" McBRIDE

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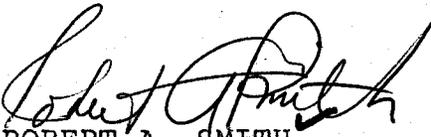
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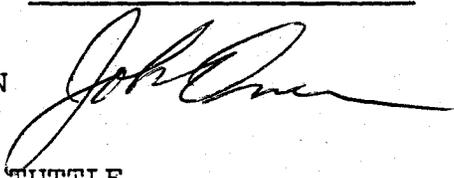
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