

2415 First Avenue
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Sacramento, CA 95809
(916) 445-1888

STATE OF CALIFORNIA

NEW CAR DEALERS POLICY & APPEALS BOARD

In the Matter of)	
)	
BISHOP-HANSEL FORD SALES, INC.,)	
dba BISHOP-HANSEL FORD,)	
A California corporation,)	
)	
Appellant,)	Appeal No. A-39-73
)	
vs.)	Filed: September 5, 1973
)	
DEPARTMENT OF MOTOR VEHICLES)	
OF THE STATE OF CALIFORNIA,)	
)	
Respondent.)	

Time and Place of Hearing: August 8, 1973, 1:30 p.m.
Auditorium, DMV
2570 - 24th Street
Sacramento, CA 95818

For Appellant: Allen M. Garfield
Attorney at Law
55 Ninth Street
San Francisco, CA 94103

For Respondent: R. R. Rauschert, Legal Adviser
Department of Motor Vehicles
By: Karl Engeman
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 (Sec. 11500 et seq. Government Code), the director found that Bishop-Hansel Ford Sales, Inc., doing business as Bishop-Hansel Ford, hereinafter referred to as "appellant" had: (1) in 14 instances charged purchasers of vehicles excessive registration fees; and (2) appellant employed or delegated the duties of salesman to four individuals who had not been licensed as such and whose licenses were not displayed on appellant's premises.

The director imposed a penalty of three days' suspension for each violation. The suspensions were ordered to run concurrently but were stayed in their entirety for a period of one year, subject to the condition that appellant obey all the laws of the United States, the State of California and its political subdivisions and obey all the rules and regulations of the Department of Motor Vehicles.

Appellant now requests us to completely reverse the penalty imposed by the director and substitute therefor a "Letter of Admonition". Appellant contends that the punishment imposed is harsh, arbitrary and much too severe, as the violations found were not wilful, but were due to oversight and ignorance. Appellant further contends that the probation is onerous as it would subject him to a 3-day suspension for any further violation during the period of

probation, even though such violation was unintentional.

Having duly considered the administrative record and appellant's brief and argument before this board on appeal, we are satisfied and in agreement with appellant that the violations involved in this case were not wilfully committed. However mitigating this factor may be, it does not excuse the violations. Wilfulness or state of mind are not elements which need be considered in determining whether there was or was not a violation of Section 11713(g) Vehicle Code (Diener Motors vs. Department of Motor Vehicles, A-15-71).

We are not confronted here with an individual new in the automobile business. Appellant's president and general manager has been a dealer for over 25 years, at least 14 of which have been in the State of California. Consequently, we cannot attach the same degree of mitigation to this case as we might otherwise do. Negligence, oversight and ignorance only point up the measure of responsibility which was lacking in the appellant in discharging its obligations to the public in compliance with the requirements of the Vehicle Code. We do not view these factors as providing any basis for condonation of the violations or for exoneration of the appellant.

Addressing the matter of the negligence of employees, our holding in Imperial Motors v. Department of Motor Vehicles,

A-28-72, is dispositive of this issue:

"A corporate licensee is responsible for all acts of its officers, agents and employees acting in the course and scope of their employment. A contrary rule would, of course, preclude meaningful license discipline."

In conclusion, our observations in *Diener Motors, Inc. vs. Department of Motor Vehicles supra* are equally applicable to the case at hand:

"The penalty permits the appellant to continue its business of selling motor vehicles. The conditions of probation merely require that appellant do that which all vehicle dealers are obligated to do; i. e., obey all laws of the State of California and the regulations of the Department of Motor Vehicles governing the exercise of the privileges as a licensee. Should appellant do so, the ... stayed suspension is of no consequence. Should it not do so, the Director of Motor Vehicles may remove the stay or a portion thereof after giving appellant notice and opportunity to be heard."

We find the penalty imposed by the Director of Motor Vehicles to be appropriate 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

MELECIO H. JACABAN

W. H. "HAL" McBRIDE

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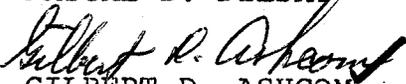
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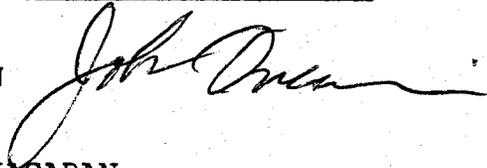
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