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Sacramento, CA 95801
(916) 445-1888

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
)
KING DODGE SALES, INC., dba)
KING DODGE, A Delaware Corporation,)
)
Appellant,)
)
vs.)
)
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA,)
)
Respondent.)

Appeal No. A-55-74
FILED: July 25, 1975

Time and Place of Hearing:

10:30 a.m., June 11, 1975
Room 114, 1220 N Street
Sacramento, CA 95814

For Appellant:

Harold C. Wright
Brown, Wright & Kucera
A Law Corporation
2600 El Camino Real, Suite 411
Palo Alto, CA 94306

For Respondent:

Honorable Evelle J. Younger
Attorney General
By: Steve Egan
Deputy Attorney General

FINAL ORDER

King Dodge Sales, a Delaware corporation, enfranchised as a new car dealer, hereinafter referred to as "appellant", appealed to this board from a disciplinary action taken against the corporate license by the Department of Motor Vehicles following proceedings pursuant to Section 11500 et seq. of the California Government Code.

The Director of Motor Vehicles, adopting the proposed decision of the hearing officer, found that:

1. Appellant failed in 56 instances to give written notice to the department before the end of the third business day after transferring the vehicles.
2. Appellant failed in 235 instances to mail or deliver the report of sale of vehicles, together with other documents and fees required to transfer the registration within the 20-day period allowed by law.
3. Appellant failed in 26 instances to mail or deliver the report of sale of the vehicles, together with other documents and fees required to transfer the registration of the vehicles, within the 30-day period allowed by law, having previously paid to the department the \$3.00 forfeiture fee as provided for in Section 4456.5(a) of the Vehicle Code.
4. Appellant employed and delegated the duties of a vehicle salesman to Daniel A. Lopez from April 14, 1974, to September 24, 1974, who had not been licensed as such pursuant to the Vehicle Code and whose license was not displayed on appellant's premises.
5. Appellant caused advertisements to be published in the Sacramento Bee on or about August 11, 1972, October 8, 1972, November 10, 1972, and November 12, 1972, which were misleading in that appellant advertised specific

vehicles without identifying them by either vehicle identification number or license number so that prospective purchasers could recognize them as the vehicle advertised for sale.

6. Appellant caused advertisements to be published in the Sacramento Bee on October 8, 1972, November 10, 1972, and November 12, 1972, which were misleading in that the vehicles pictured in connection with such advertisements were not available for purchase with the equipment as depicted at the advertised price of such vehicle.
7. Appellant in 48 instances charged purchasers of vehicles excessive registration fees.

The hearing officer made additional findings, which were adopted by the director, as follows:

8. Appellant is a high volume dealership. Its gross sales volume was over \$5,000,000 in 1971 and exceeded \$7,000,000 in 1972. Vehicle sales average approximately 200 units per month. Chrysler Corporation owns 75% of the stock, with the balance owned by Appellant's president Gene Acherman. Mr. Acherman is in general overall charge of day-to-day operation of the business. The responsibilities of a dealer with respect to timely reporting of transactions is well known to Appellant. It had a

procedure for processing its Department of Motor Vehicles work which would have effected compliance had it been properly implemented. Appellant's problem seems to have been an absence of the type of staff supervision necessary to insure that proper and prescribed procedures were followed. The result was a high incidence of late filings and incorrect or incomplete filings. Fee overcharges that should have been detected were overlooked and not detected and corrected until brought to Appellant's attention by the Department's selective audit. Mr. Acherman does intend to have Appellant operate in compliance with the requirements, however, this can be done only if adequate manpower and supervision are assigned to the task.

9. With respect to the unlicensed salesman, appellant's general manager, who hired Mr. Lopez, was aware of the established policy of appellant that no salesman was to be allowed on the floor unless he was properly licensed. For some reason not explained in the evidence, the policy was not followed with respect to Lopez. When this omission was brought to the attention of appellant's president on September 24, 1972, Lopez was immediately sent to the Department office where his license was issued that day.

10. Appellant does a great deal of advertising and makes use of the services of an advertising firm for this purpose. Appellant cannot remove from itself responsibility for its advertising by employing an independent advertising firm. Advertisements were published for inadequately identified vehicles where no price was shown because Mr. Acherman believed, in error, that identification was not necessary if no price was advertised. The advertisement for the Dodge Sport Coupe depicted a vehicle with special roof and wheels that was not available at the advertised price of \$2388. The use of the words "Special Wheels and Roof Trim Optional" did not correct the misleading nature of the advertisement in that to the uninformed the overall impression of the advertisement was that the vehicle shown could be had for \$2388. Appellant's violation with respect to the advertisements resulted from error in judgment and in the applicable law. These misconceptions were apparently shared by the advertising firm. Appellant did have an after the fact procedure for attempting to correct discussed errors in that the newspaper which published the offending copy was requested to write a letter of correction which appellant then posted in its showroom. Appellant had no adequate procedure for reviewing agency prepared copy before it was published. It is found, however, that appellant did not engage in

any scheme or design of publication of misleading advertising.

PENALTY

The director, adopting the proposed decision of the hearing officer, suspended appellant's dealer license, certificate and special plates for 5 days with 3 days stayed for one year on the usual probationary terms.

BASIS OF APPEAL

Appellant predicates its appeal on the grounds that: (1) the department has proceeded without or in excess of its jurisdiction; (2) the department has proceeded in a manner contrary to the law; (3) the decision is not supported by the findings; (4) the facts are not supported by the weight of the evidence; (5) the determination of penalty, as provided in the decision of the department, is not commensurate with the findings.

As to the first issue, appellant asserts that the findings of the director are inadequate, in particular, because appellant introduced substantial evidence concerning the department's use of certain documents and that the hearing officer made no findings relative to specific defenses raised at that hearing. Our observations and conclusion in Thiel Motors, Inc. vs. Department of Motor Vehicles, A-33-72, are dispositive of this issue. In that case, we stated:

"Section 3054, subsection (d), Vehicle Code, requires us [the board] to use the independent judgment rule when reviewing the evidence."

Accordingly, our review takes into consideration all of the evidence presented at the hearing, thereby obviating any error, if such did exist in the hearing officer's failure to make a finding as to facts offered in mitigation and defense. Further, we have considered the legal arguments propounded by appellant in his brief and find them to be without merit.

Having independently weighed all the evidence in light of the whole record, we determine that all of the findings, as found by the director, are supported by the evidence. We further find that the department has not exceeded its jurisdiction nor has it proceeded in a manner contrary to law. Accordingly, all of the Findings of Fact and Determination of Issues relative thereto are affirmed.

Having carefully and fully considered and weighed all of the matters established by the appellant in mitigation and defense in this case, we find the penalty to be entirely commensurate with the findings.

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

This Final Order shall become effective August 25, 1975 .

THOMAS KALLAY

ROBERT A. SMITH

MELECIO H. JACABAN

AUDREY B. JONES

PASCAL B. DILDAY

WINFIELD J. TUTTLE

JOHN D. BARNES

JOHN B. VANDENBERG

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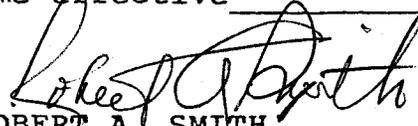
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*King Dodge vs DMV
New Motor Vehicle Bd.*

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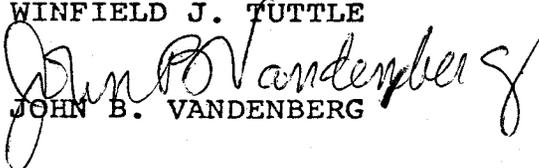
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