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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of)
)
CARL A. DeGREEF, INC., dba)
RIVIERA MOTORS, a California)
corporation,)
)
Appellant,)
)
vs.)
)
DEPARTMENT OF MOTOR VEHICLES)
OF THE STATE OF CALIFORNIA)
)
Respondent.)
_____)

Appeal No. A-66-75
FILED: May 28, 1976

Time and Place of Hearing:-----

10:30 a.m. April 7, 1976
722 Capitol Mall, Room 4061
Sacramento, CA 95814

For Appellant:

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

For Respondent:-----

Honorable Evelle J. Younger
Attorney General
By: Matthew P. Boyle
Deputy Attorney General

FINAL ORDER

Carl H. DeGreef, Inc., a California corporation, enfran-
chised as a new motor vehicle dealer, hereinafter referred to as
"appellant", appealed to this board from a disciplinary action
taken against the dealer's license by the Department of Motor
Vehicles following proceedings pursuant to Section 11500 et seq.
of the Government Code.

FINDINGS OF DIRECTOR OF MOTOR VEHICLES

Initially, the director did not adopt the hearing officer's proposed decision. After independently reviewing the administrative record, the director adopted the proposed findings of the hearing officer in their entirety and found:

1. Appellant failed, in 5 instances, to mail or deliver the reports of sale of the vehicles, together with other documents and fees required to transfer the registration of the vehicles within the 20 day period allowed by law.
2. Appellant failed, in 2 instances, to mail or deliver the reports 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.
3. Appellant, in 41 instances, included it as an added cost to the selling price of vehicles additional licensing or transfer fees in excess of the fees due in paid to the state. Appellant has made efforts to reimburse the purchasers.
4. Appellant's employees, in 5 instances, disconnected, turned back, or reset the odometer, or caused the same to be done, to reduce the mileage indicated on the odometer gauge.

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

1. Carl H. DeGreef, is president of the appellant, a corporation. The evidence fails to establish that Carl H. DeGreef was an active party to the odometer "spinbacks". The evidence does establish that he failed to exercise the supervision necessary to prevent "spinbacks" by his employees.
2. Appellant has adopted office procedures designed to minimize reporting deficiencies.
3. Carl H. DeGreef, and his wife own 98% of the shares of the appellant corporation.

The Director adopted the hearing officer's proposed decision and imposed the following penalty:

1. For the violations related to late transfers and overcharges, a penalty of five days suspension with five days stayed for a period of five years probation under the usual terms and conditions.
2. For the violations related to odometer tampering, the dealer's license was revoked with revocation stayed for a period of five years probation. A 10-day actual suspension was imposed.

The appellant's appeal is predicated primarily upon three grounds: First, the findings are not supported by the weight of the evidence in light of the record; second, the determination of the penalty is not commensurate with the findings; third, the department has proceeded in a manner contrary to the law.

Appellant does not seriously contest the substantive determinations made by the hearing officer with regard to the late transfers, overcharges, and odometer tampering. The evidence in the record clearly supports the findings that the events and transactions did occur. Therefore, appellant's appeal on this basis is without merit.

The appellant's second ground of appeal is based upon the penalty imposed for the above mentioned violations, particularly the penalty imposed for the odometer violations. The odometer tampering is undoubtedly the most serious offense in this accusation. The duties and responsibilities of a new motor vehicle dealer necessitate a high degree of care in dealing with the public. These responsibilities also require sufficient internal procedures to comply with the standards imposed by the California Vehicle Code. The director imposed a penalty which revoked the appellant's license, however, this revocation was stayed for a period of five years, during which the appellant was placed on probation. The appellant's license was actually suspended for a period of ten days.

After independently reviewing the record in its entirety, we are not persuaded that the penalty imposed was not commensurate with the findings. On the contrary, the penalty imposed in this case is fully justified by the appellant's conduct during the period in question.

The primary basis for the appellant's appeal relates to alleged unconstitutional and unconscionable delay in reaching an administrative resolution of this case. The board, pursuant to Section 3054(b) and Section 3055 Vehicle Code, may inquire into whether or not the department has proceeded in a manner contrary to law and if it finds the department has so proceeded, it may amend, modify, or reverse the penalty imposed by the department.

In its opening brief and its argument before the board, the appellant stressed that one of the purposes of an administrative action is to avoid the delays which are experienced in a normal civil court procedure by providing a forum for expedient resolution of such matters. (1 K. Davis, Administrative Law Treatise, Section 8.08 at 549.) This objective would be totally frustrated by unnecessary, unexplained, and unwarranted delays in the resolution of an administrative action.

The Department of Motor Vehicles is not required to render its decision within a specific period of time. However, this is not to say that the department has an unlimited time in which to render its decision. "Many enactments do not contain any specific time provision. In these cases, an agency would have a reasonable time in which to file its decision. What constitutes a reasonable time depends on the complexity and nature of the case." California Administrative Agency Practice (California C. E. B. 1970, at p. 212). Thus, the department must render its decision within a "reasonable time".

The following chronological summary will indicate the unexplained delays which occurred in the instant case. The accusation was filed on May 16, 1973. The administrative hearing was held September 12-19, 1973. At the close of the hearing, the department represented that it proposed to order the hearing transcript prior to preparing its opening argument. The hearing reporter submitted his cost estimate for preparation of the record on September 19, 1973, but the department failed to order the record. On October 30, 1973, appellant learned that the department had neither requested the record nor filed its opening argument, as established in the hearing officer's timetable. A new timetable was established and the department was to file its opening argument by November 28, 1973. The department did not file its opening argument until January 29, 1974. Appellant filed a reply on February 27, 1974 and the department closed on March 19, 1974.

The hearing officer submitted his proposed decision to the department on June 19, 1974. Five months later, on November 18, 1974, the department filed that decision, together with a "Notice of Rejection of Proposed Decision". Appellant filed a written argument in opposition to the proposed decision of December 2, 1974. On March 31, 1975, appellant requested a hearing and an opportunity to present new evidence. The department responded to this letter on April 15, 1975, indicating that the proposed decision was still under consideration by the director. Appellant submitted several more letters in June and August, 1975, urging the director to

render a decision. The director's decision was finally filed on September 5, 1975. This decision contradicted the November 18, 1974, rejection of proposed decision, and adopted the original proposed decision of the hearing officer.

The appellant contends that the delay had significant detrimental effects upon the operation of the dealership. Until the decision was rendered, the appellant could not determine whether or not the license would be revoked unconditionally, as was intimated in the original notice of rejection of the decision of the hearing officer. Nissan Motor Company would not re-franchise the appellant until certain improvements were made, and these improvements could not be made until it was determined whether or not the license would be revoked. During the intervening period of time, the DeGreefs have been divorced and Carl DeGreef has forfeited his community property interest in the dealership. During oral argument, counsel for the appellant indicated that Mrs. DeGreef was presently the dealer of record, however, negotiations were underway which would transfer the dealership within the week following the board's hearing.

It is clear that significant delay has been encountered. The administrative hearing was held September 12-19, 1973, but the decision was not rendered until September 5, 1975. Despite repeated attempts by the appellant to secure a decision, a decision was not rendered for two years following the date of the administrative hearing. Furthermore, no explanation was given for

this extended delay, with the possible exception of a change in the department's directorship.

The board is of the opinion, and we so hold, that this two-year delay was unnecessary, largely unexplained, and therefore was unreasonable. We believe that the two-year delay should be considered in arriving at an appropriate penalty. Consequently, the five year stay imposed by the department should be reduced by the amount of the delay, resulting in a three year stay of revocation and probation.

Pursuant to Section 3054 and Section 3055 of the Vehicle Code, the New Motor Vehicle Board modified the decision of the Director of Motor Vehicles as follows:

WHEREFORE THE FOLLOWING ORDER IS MADE:

The vehicle dealer's license, certificate, and special plates (D-4855 and TR-408) heretofore issued to appellant, Carl H. DeGreef, Inc., dba Riviera Motors, be and the same are hereby suspended and revoked as provided in the Director's Decision (D-1354) filed on September 4, 1975: provided, however, that this order of revocation shall be stayed for a period of three years from the effective date of this decision, during which time the appellant shall be placed on probation to the Department of Motor Vehicles of the State of California upon the following terms and conditions:

Appellant shall obey all the laws of the State of California and all rules and regulations of the Department of Motor Vehicles insofar as said laws, rules and regulations govern the exercise of its privileges as a licensee.

If and in the event the Director of Motor Vehicles shall determine, after giving appellant notice and opportunity to be heard, that a violation of probation has occurred, the director may terminate the stay and impose the stayed portion of the suspension or revocation, or otherwise modify the order. In the event the appellant shall faithfully keep the terms of the conditions imposed for the period of three years, the stay shall become permanent and the appellant shall be fully restored to all of its license privileges.

This Final Order shall become effective June 28, 1976.

JOHN ONESIAN

AUDREY B. JONES

JOHN D. BARNES

JOHN B. VANDENBERG

WINFIELD J. TUTTLE

A-66-75