

STATE OF CALIFORNIA

NEW CAR DEALERS POLICY & APPEALS BOARD

In the Matter of)
FRANK B. DENIS, dba)
DENIS DODGE,)
Appellant,)
vs.)
DEPARTMENT OF MOTOR VEHICLES,)
Respondent.)

Case No. A-9-70

Filed:

January 4, 1971

Time and Place of Hearing:

December 9, 1970, 11:15 A.M.
2415 First Avenue
Sacramento, California

For Appellant:

Law Offices of C. Ray Robinson
by: William Ivey, Jr.
Attorney at Law
650 West 19th Street
Merced, CA 95340

For Respondent:

Honorable Thomas Lynch
Attorney General
by: Richard L. Hamilton
Deputy Attorney General

FINAL ORDER

In the Decision ordered March 5, 1970, by the Director of Motor Vehicles, pursuant to Chapter V, Part 1, Division 3, Title 2, of the Government Code, it was found that appellant:

(1) Failed in 28 instances to give respondent written notice of the transfer of the interest in certain vehicles within the time

specified by Section 5901 Vehicle Code; (2) wrongfully and unlawfully failed in 5 instances to mail or deliver to respondent the report of sale of used vehicles, together with other documents and fees required to transfer registration of the vehicles, within the 20-day period allowed by law; (3) wrongfully and unlawfully failed in 1 instance to mail or deliver to respondent the report of sale of a new vehicle, together with other documents and fees required to transfer registration of the vehicle, within the 10-day period allowed by law; (4) in 6 instances, filed with the respondent a false certificate of non-operation of certain vehicles; (5) disconnected, turned back, or reset the odometer on 4 vehicles in order to indicate a reduced mileage thereon.

It was further found by respondent that appellant, during the period of the aforementioned occurrences, was personally involved in several business enterprises and that the dealership was managed and operated by employees to a substantial degree.

On each of the findings involving the untimely reporting to respondent and the filing of false certificates of non-operation, appellant's license, certificate and special plates were ordered suspended for a period of 45 days, all to commence on the effective date of respondent's order. In addition thereto, appellant's license, certificate and special plates were ordered revoked, separately and severally, for each

of the four findings involving the altering the mileage indicated on odometers.

An appeal was filed with this board pursuant to Chapter 5, Division 2 of the Vehicle Code, alleging that: (1) The findings are not supported by the weight of the evidence in light of the whole record; (2) the Decision is not supported by the findings; and (3) the penalty is not commensurate with the findings.

At the administrative hearing, appellant admitted all matters charged in the Accusation. With an abundance of caution, the hearing officer ascertained that appellant was fully aware of the possible consequences of these stipulations (R.T. 4, line 27 to R.T. 7, line 9). On appeal, appellant did not ask to be relieved of these admissions and appellant conceded that the penalty imposed did not constitute an abuse of discretion on the part of respondent. Appellant took the position that the findings of respondent were deficient because there was no finding that appellant: (1) was not personally aware that the unlawful acts occurred; (2) took corrective action upon learning of such acts; (3) cooperated with respondent's investigators; and (4) that persons wronged by appellant's misconduct continued to do business with appellant.

Appellant cites no authority for the proposition that respondent had a duty to make findings of fact on matters which might be of a mitigating nature. Administrative findings must satisfy the dual requirements of making

intelligent review by a court possible and apprising parties of the bases for administrative action. They are sufficient if they set forth the specific grounds upon which the agency based its decision (Savelli v. Board of Medical Examiners, 229 Cal.App.2nd 124). The findings of the Director of Motor Vehicles clearly meet this test.

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

We answer this question in the affirmative. In addition to demonstrating a disregard for the laws governing a dealer's obligation to timely and truthfully report certain facts to the Department of Motor Vehicles, appellant engaged in a course of conduct designed to victimize innocent purchasers of motor vehicles. The preponderance of the evidence establishes that appellant was personally aware of the resetting of odometers on automobiles in his inventory, and that he personally directed that odometers be reset. Respondent found that appellant "caused" this unlawful practice to occur and we agree with that finding.

One licensed by the State of California is under a high duty to avoid conduct of a fraudulent nature in the pursuit of the licensed business and to report certain facts timely and accurately to respondent. Appellant fell far short of meeting this standard. We find no bases in the record

before us which would warrant a reduction of the penalty. Permitting this licensee to continue in the business of selling motor vehicles would be inimical to the public welfare.

The Decision of the Director of Motor Vehicles is affirmed and shall be effective on the eighteenth day following the date this Final Order is filed.

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WARREN BIGGS, President

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GILBERT D. ASHCOM

PASCAL B. DILDAY

RALPH L. INGLIS

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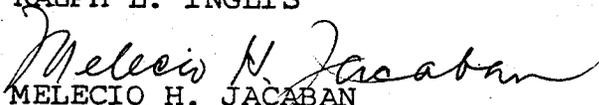
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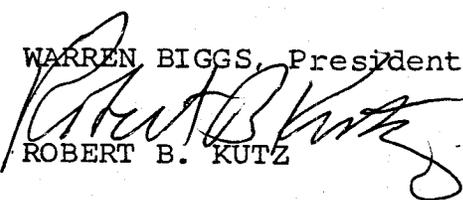
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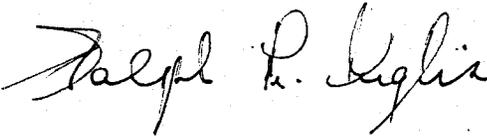
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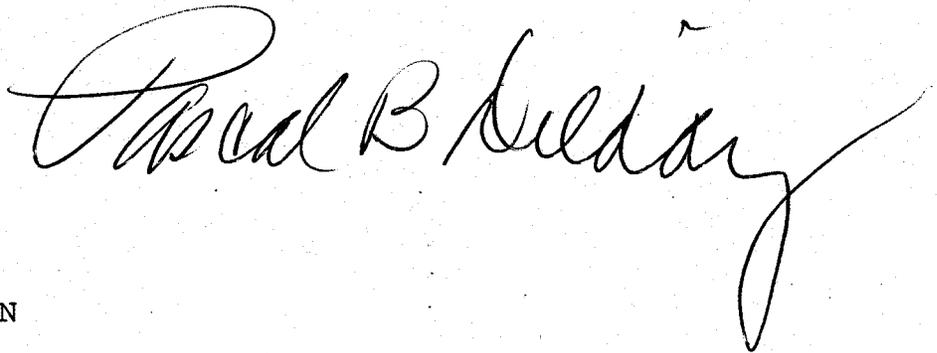
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