

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of)
)
EAST VALLEY MOTORS, INC., dba) Petition No. P-62-80
ONTARIO HONDA SALES & SERVICE,)
)
Petitioner,)
)
vs.)
)
AMERICAN HONDA MOTOR COMPANY,)
INC.,)
)
Respondent.)
_____)

PROPOSED DECISION

Procedural Background

1. On February 5, 1980, Petitioner, East Valley Motors, Inc., dba Ontario Honda Sales and Service filed a petition with the New Motor Vehicle Board pursuant to Vehicle Code section 3050(c) contending that Respondent, American Honda Motor Co., Inc., (American Honda) established Allied Motorsports, Inc., dba Honda of Pomona (Allied), a Honda motorcycle dealership at 1485 East Holt Boulevard, Pomona, without complying with the provisions of Vehicle Code sections 3062 and 3066.

2. After first consideration by the Board on March 27, 1980, a hearing was held before Anthony M. Skrocki, Administrative Law Judge for the New Motor Vehicle Board on April 9, 1980. Petitioner was represented by A. Albert Spar of the law firm of

Pilot and Spar. American Honda was represented by Arnold E. Sklar of the law firm of Lyon and Lyon.

Issue Presented

3. Ontario Honda contends that establishment of Allied required that American Honda file notice of such intent with the Board pursuant to Vehicle Code section 3062 and to give such notice to Ontario Honda, a dealer within the relevant market area of the Allied location.

4. Ontario Honda contends that failure to give the notices deprived it of the right to protest such establishment pursuant to section 3062.

Applicable Law

5. Vehicle Code section 3062 provides in part:

"(a) . . . For the purposes of this section, the reopening in a relevant market area of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership.

(b) With respect to the relocation of an existing dealership, subdivision (a) shall not apply to any relocation which is less than one mile from the existing location of the dealership and which is to a location within the same relevant market area within the same city where the existing dealership is located."

Facts

6. Allied, when first franchised by American Honda in August 16, 1979, was established at 1229 East Holt Avenue,

Pomona. This was the site of what had been Arnold's Honda of Pomona, a motorcycle franchisee.

7. Arnold's Honda had not been out of operation for more than one year, when the following events occurred:

(a) A buy-sell agreement between Arnold's Honda and Allied was executed on June 27, 1979;

(b) Allied occupied the premises, and installed shelving and motorcycle and parts inventories;

(c) Licenses and permits to conduct a retail sales operation were issued to Allied at the 1229 East Holt Avenue address;

(d) Allied advertised and made sales of motorcycles and parts during the month it occupied the 1229 East Holt Avenue address.

8. Allied moved its business a distance of two-tenths (.2) of a mile, from 1229 East Holt Avenue to 1485 East Holt Avenue on or about October 17, 1979.

Determination of Issues

9. American Honda's enfranchising of Allied at 1229 East Holt Avenue, Pomona, constituted the reopening of a dealership that had not been out of operation for one year or more within the meaning of 3062(a). Allied's subsequent move to 1485 East Holt Avenue, Pomona, was less than one mile.

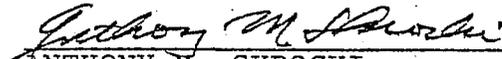
10. The provisions of section 3062 requiring notice to the Board and Ontario Honda are not applicable to the establishment of Allied at 1485 East Holt Avenue.

* * * * *

It is recommended that the Petition be dismissed.

I hereby submit the foregoing which constitutes my proposed decision in the above entitled matter, as a result of a hearing had before me on the above date at Sacramento, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: April 14, 1980.



ANTHONY M. SKROCKI
Administrative Law Judge
New Motor Vehicle Board