

Received

F I L E D
New Motor Vehicle Board
Date <i>December 4, 1974</i>
By <i>Jacqueline Powell</i>

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of
 CHARLES H. HORNBERG, JR., MOTOR CARS,
 a California Corporation,
 Franchisee,
 vs.
 ROLLS-ROYCE MOTORS, INC.,
 a Delaware Corporation,
 Franchisor.

Protest No. PR-1-74
 N-5182

PROPOSED DECISION

This matter came on for hearing before Rudolf H. Michaels, a Hearing Officer of the Office of Administrative Hearings, on October 24, 1974, in Sacramento, California, having been continued to that date from September 23, 1974, following proceedings before Gilbert E. Elmore, a Hearing Officer, of the Office of Administrative Hearings.

The Franchisor was represented by Bernard Petrie, its attorney.

The protestant Franchisee was present and was represented by Musick, Peeler & Garrett by James R. Bertero, its attorneys.

A motion of the Franchisor that the proceedings be dismissed on the grounds that the underlying statute is unconstitutional was taken under submission.

The Franchisor further moved that the portion of the proceedings arising from a protest against the establishment of an additional franchise in close proximity to Franchisee's location be dismissed on the grounds that (1) the additional franchise was established prior to the operative date of the governing law, and (2) the protest was not timely. This motion was also taken under submission.

Oral and documentary evidence was received, the hearing was closed and the matter was submitted.

With the consent of counsel for the Franchisor, a "Supplemental Declaration" received from the Franchisee was, on November 13, 1974, included in the record as Exhibit "W".

The Hearing Officer makes the following proposed decision:

FINDINGS OF FACT

I

Beginning in 1963, and at all times material herein, the Franchisee, Charles H. Hornburg, Jr., Motor Cars, a corporation, was franchised by the Franchisor Rolls-Royce Motors, a corporation, for the sale of Rolls-Royce and Bentley automobiles in a market area roughly delineated for the purposes of these proceedings, by a line running southerly from Glendale along Figueroa Boulevard to the Pacific shore at San Pedro, then along the shoreline to Solromar, and from there roughly eastward along the Freeway back to Glendale. The Franchisee's headquarters was and is in Beverly Hills.

II

The franchise was last renewed for one year effective October 1, 1973, pursuant to a "Dealer Agreement" executed by the Franchisor and the Franchisee.

III

On June 18, 1974, the Franchisor notified the Franchisee (1) that it would not reappoint the Franchisee as a Rolls-Royce dealer for the 1974/75 franchise year beginning on October 1, 1974, and (2) that a Rolls-Royce dealership had been established in the relevant market area with another dealer.

IV

On July 19, 1974, there was filed with the New Motor Vehicle Board of the State of California (hereafter referred to as the "Board") a "Notice of Protest" pursuant to Article 4 (beginning with Section 3060) of Chapter 6 of Division 2 of the

Vehicle Code of California (hereafter referred to as "Article 4"), protesting (1) the termination of the franchise as of the end of the franchise year and (2) the establishment of another dealership in the relevant market area.

V

At all times material herein, until about two years ago and with the knowledge and consent of the Franchisor, the Franchisee was also a distributor, dealer, and service agency for the Jaguar line, and for the past two years a dealer and service agency for the Leyland line which includes MG and Triumph automobiles.

VI

During the past 4 years, the Franchisee has not transacted the volume of business available in the relevant market area. Not only volume of sales transacted by the Franchisee has declined from 52 sales in 1969 and more than any other dealer in the United States, to 13 in 1973, but the percentage figures show an even sharper decrease of the Franchisee's share of the market. The Los Angeles area is the most productive market in the United States for Rolls-Royce automobiles. The sales of the other Rolls-Royce dealers in the area have generally shown increases over the last several years. The Franchisee's failure to transact the volume of business available in the market area is largely attributable to two major factors: (1) a persistent failure to provide prompt and efficient service which caused customers to look elsewhere for service which in turn acquainted them with other Rolls-Royce dealers from whom they then purchased cars; and (2) a failure to go along with sales campaigns organized and instituted by the Franchisor.

VII

The Franchisee's failure to render adequate service was caused in part by inadequate facilities and inadequate personnel. The Franchisee made numerous efforts to solve both problems. Adequate space and trained personnel are difficult to obtain in Beverly Hills. The demands for service grew substantially above any increase in the number of units sold by the Franchisee because persons who already owned Rolls-Royce cars moved into the Los Angeles area bringing their cars with them. The Franchisee contends that it had facilities adequate to service the cars sold by it. The fact remains that, in

general, service was not promptly available; that the Franchisee often referred service customers to other shops; and that the service provided by the Franchisee was the source of frequent customer complaints.

VIII

In general, the Franchisee fulfilled the warranty obligations of the Franchisor. On occasion, warranty work was referred to shops not authorized by the factory to perform warranty service and, as a general rule, front-end work was referred out because the Franchisee lacked the facilities to perform this service on its own premises.

IX

The Franchisee failed to comply with paragraph 2. of the Terms and Conditions of Dealer Franchise executed between the parties by the failure, described in Findings VII and VIII, "to give the best possible service to owners of Bentley and Rolls-Royce motor cars, wherever and whenever they may have been purchased."

X

There was no evidence that replacement of the franchise would be injurious to the public welfare.

XI

It is found that the additional franchise in the relevant market area and mentioned in Finding III was granted in due course of business and neither in undue haste nor in bad faith in order to establish the new dealership before the July 1, 1974, operative date of Article 4.

DETERMINATION OF ISSUES

I

Article 4, enacted in 1973 and amended in 1974 with an operative date of July 1, 1974, does not conflict with or violate the provisions of the Due Process or Equal Protection clauses of Amendment XIV of the Constitution of the United States, nor does it impair the freedom to contract in violation

of Section 10, Clause 1 of Article I of the Constitution, nor has the Congress pre-empted the subject matter of the Article.

II

The additional franchise in the relevant market area was established prior to the operative date of Article 4. Therefore, the Board lacks jurisdiction to adjudicate the Franchisee's attempted protest against that particular action. It follows that the protest ought to be dismissed insofar as it purports to challenge the establishment of an additional franchise. Under those circumstances, it is unnecessary to decide whether the attempted protest was timely.

III

Cause was established under the provisions of Article 4 and Findings VI, VII, VIII, and IX for the termination of the franchise as described in Finding III.

ORDER

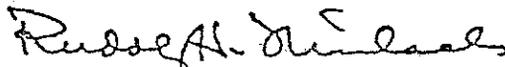
1. The motions of the Franchisor to dismiss the present proceedings on constitutional grounds are, and each of them is, denied.

2. The protest is dismissed insofar as it relates to and protests the establishment of an additional franchise in the relevant market area.

3. The protest is overruled insofar as it relates to and protests the termination of the franchise as set forth in the Notice of Termination.

The foregoing constitutes my proposed decision in this matter. I recommend its adoption as the decision of the New Motor Vehicle Board of the State of California.

Dated: December 3, 1974.



RUDOLF H. MICHAELS, Hearing Officer
Office of Administrative Hearings