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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
J. H. BROWN, dba TRICOLOR MOTORS, )  
Protestant, ) Protest No. PR-105-76  
vs. ) FILED: February 14, 1977  
RENAULT WEST, INC., )  
Respondent. )  
..... )

DECISION

Procedural Background

1. Respondent Renault West Incorporated ("Renault") gave notice pursuant to Section-3062 of the Vehicle Code <sup>1/</sup> of its intention to establish a new franchise at Hayward Recreational Center dba Hayward Renault, 25700 Mission Boulevard, Hayward, California 94544 ("proposed franchise").

2. A protest was filed with the New Motor Vehicle Board ("Board") by ~~Mr. J. H. Brown, dba Tricolor Motors, a sole proprietorship, ("Tricolor") located at 10233 East 14th Street, Oakland, California.~~

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1. All references are to the Vehicle Code.

3. A hearing was held pursuant to Section 3066 before Sam W. Jennings, Executive Secretary and Hearing Officer of the New Motor Vehicle Board, in Sacramento, California, on Monday, August 23, 1976, at 9:30 a.m. The protestant was represented by Kenneth E. Sullivan, Jr., of the Law Offices of Vantassell, Sullivan & Vantassell, Inc. The respondent was represented by Richard D. DeLuce of the Law Offices of Lawler, Felix & Hall, its attorneys.

4. The Board considered the Hearing Officer's Proposed Decision at its meetings of December 14, 1976 and January 12, 1977 in Executive Session.

#### Issues Presented

5. Tricolor contends that good cause has not been shown for the establishment of the proposed franchise for the following reasons:

(a) The proposed franchise will reduce Tricolor's earnings and earning capacity and will therefore have an adverse effect upon Tricolor's permanent investment. (Section 3063(1).)

(b) Tricolor's reduced earnings, and the attendant need to cut costs, will make it impossible to maintain adequate service facilities and qualified service personnel. This would have an adverse effect on the consuming public within the relevant market area. (Section 3063(3).)

(c) The proposed franchise would not increase competition, since it would merely re-distribute the existing market which is being adequately serviced by Tricolor. (Section 3063(5).)

The Board now makes the following findings of fact:

Facts Relating to Permanency of Investment  
(Section 3063(1).)

6. Mr. J. H. Brown has been the sole proprietor of Tricolor since it came into existence in April 1963, and has been a Renault dealer since that time.

7. Mr. Brown's capital investment in Tricolor since April 1963 totals \$41,000. The cost of acquisition of service facilities was approximately \$15,800.

8. In addition to Tricolor, there were approximately 13 Renault dealerships in existence in the San Francisco market area in 1963. Tricolor is the only franchise in this market area which has remained under the same ownership in the 1963-1976 period.

9. Tricolor has sold Peugeot vehicles since 1963 and Subaru since 1972.

Facts Relating to Reduced Service Facilities  
and Personnel (Section 3063(3).)

10. Tricolor employs a full-time parts and service manager and mechanic. Mr. Brown also contributes his services as a mechanic.

11. In addition to Renault automobiles, the three individuals named in finding 10 also service Peugeot and Subaru vehicles.

12. Tricolor's facilities and personnel provide satisfactory service to the public in, and beyond, the relevant market area.

13. The record of Tricolor sales of Renault automobiles is as follows:

<u>Year</u>	<u>Sales Local</u>	<u>Sales Over-Seas</u>
1963	43	0
1964	44	0
1965	52	0
1966	52	0
1967	74	6
1968	53	3
1969	37	9
1970	29	10
1971	29	15
1972	37	16
1973	8	8
1974	5	6
1975	12	9
1976 to date	7	11

14. The decline in sales commencing in 1973 is attributable to the fuel crisis of that year and to difficulties experienced by Tricolor in obtaining vehicles from Renault. There was no evidence which would have tended to establish that the decline in sales was due to competition from other Renault dealers.

15. In Mr. Brown's opinion, the opening of the proposed franchise would not put Tricolor out of business but it would possibly cause Tricolor to discontinue sales of Renault.

Facts Relating to Competition  
(Section 3063(5))

16. Data obtained from Rubin H. Donnolly Co., Motor

Registration News, reflect that out of a total of 54,031 foreign and domestic car registrations for a preceding 10-year period in Hayward, California, Renault registrations were some fraction of a category entitled "other" showing 923 registrations.

17. Kelley Blue Book Reporter, Western Region, (August 1976) shows 33 Renault registrations for California for the months of January through May 1976 as compared with the total California domestic and foreign registration of passenger vehicle registrations of 323,593.

18. Three out of the ten Renaults purchased in northern California in January-May 1976 were sold by Tricolor.

19. Sales activities by another dealer located north of Tricolor in Oakland during 1970-71 had a limited effect on Tricolor sales during that period.

20. The proposed franchise is located to the south of Tricolor in the City of Hayward. Hayward experienced a population growth of 28% in 1960-70. The population in Oakland and neighboring San Leandro has declined 1% and risen 4.1%, respectively.

Facts Relating to the Proposed Franchisee

21. The proposed franchise will be owned and operated by Mr. Henry Kachaturian also known as Hank Torian. Mr. Torian's dealerships (Hayward Dodge, Inc. at 24773 Mission Boulevard, Hayward, California, and Hayward Recreational Vehicles Center,

Hayward, California) are currently licensed by the California Department of Motor Vehicles.

22. The license of Hayward Dodge, Inc. was suspended by the Department of Motor Vehicles on October 18, 1976. The suspension was stayed on certain probationary conditions.

23. Mr. Torian, Hayward Dodge, Inc. and Hayward Recreation Center, Inc. are parties defendant to a stipulated judgment of July 23, 1976 in action No. 488292-2 brought by the District Attorney of Alameda County for unlawful acts in the operation of the dealerships.

The Board determined the issues presented by Tricolor as follows:

Determination of Issues

1. Tricolor has failed to establish that the operation of a new franchise in the Hayward area will reduce its sales and that sales cannot be increased in the Hayward area. Accordingly:

(a) It has not been established that the investment in Tricolor will be adversely affected by the proposed franchise (paragraph 5(a)); and

(b) The establishment of the proposed franchise is likely to increase sales and competition and will therefore be in the public interest (paragraph 5(c)).

2. The investment of Tricolor is permanent. Tricolor has failed to establish that the investment in the proposed franchise

will not be of a permanent nature.. (Paragraph 5(a).)

3. Tricolor will continue to be able to service Renault vehicles if the proposed franchise is established. (Paragraph 5(b).)

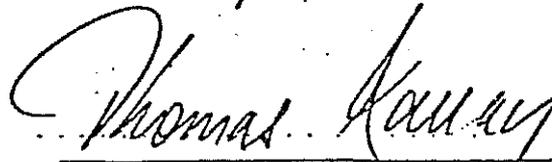
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WHEREFORE, THE FOLLOWING ORDER is hereby made:

The protest is overruled. The respondent is entitled to establish the proposed franchise.

The foregoing constitutes the decision of the NEW MOTOR VEHICLE BOARD.

Dated: 1/27/77

  
THOMAS KALLAY, President

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