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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of)	
MACHOWARD LEASING, dba JOE)	Protest No. PR-1208-90
MacPHERSON CHEVROLET;)	
GUARANTY CHEVROLET MOTORS,)	Protest No. PR-1209-90
dba GUARANTY CHEVROLET;)	
SELMAN CHEVROLET, dba)	Protest No. PR-1210-90
SELMAN CHEVROLET,)	
)	
Protestants,)	
vs.)	
CHEVROLET MOTOR DIVISION,)	
GENERAL MOTORS CORPORATION,)	
)	
Respondent.)	

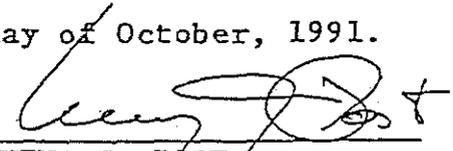
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the New Motor Vehicle Board as its Decision in the above-entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 24th day of October, 1991.

By


MANNING J. POST
Vice-President
New Motor Vehicle Board

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JOE MacPHERSON CHEVROLET;)

Protest No. PR-1208-90

GUARANTY CHEVROLET MOTORS, dba)
GUARANTY CHEVROLET;)

Protest No. PR-1209-90

SELMAN CHEVROLET, dba)
SELMAN CHEVROLET,)

Protest No. PR-1210-90

Protestants,)

vs.)

PROPOSED DECISION

CHEVROLET MOTOR DIVISION,)
GENERAL MOTORS CORPORATION,)

Respondent.)

PROCEDURAL BACKGROUND

1. By separate letters dated November 28, 1990, General Motors Corporation, Chevrolet Motor Division ("Chevrolet"), 515 Marin Street, Suite 205, Post Office Box 5003, Thousand Oaks, California gave notice pursuant to California Vehicle Code section

3062^{1/} to MacHoward Leasing, dba Joe MacPherson Chevrolet ("MacPherson"), 21 Auto Center Drive, Irvine, California, Guaranty Chevrolet Motors, dba Guaranty Chevrolet ("Guaranty"), 711 East 17th Street, Santa Ana, and Selman Chevrolet Company, dba Selman Chevrolet ("Selman"), 1800 East Chapman, Orange, California, of Chevrolet's intention to establish Chevrolet representation in the Tustin Auto Mall, at 16 Auto Center Drive. The notices were received by the New Motor Vehicle Board ("Board") on November 30, 1990.

2. On December 4, 1990, Guaranty, MacPherson and Selman filed separate protests. On February 8, 1991, the protests were consolidated for hearing.

3. The hearing was held before Robert S. Kendall, Administrative Law Judge of the Board, on March 11 and 12, 1991; March 25 through 28, 1991; and April 8 through 12, 1991, at Sacramento.

4. On August 21, 1991, the Protestants' filed a motion to reopen hearing for the taking of additional evidence. On September 18, 1991, a telephonic hearing on the motion was held before Robert S. Kendall, Administrative Law Judge. The Board by order dated October 9, 1991, denied the Protestants' motion.

5. Protestants were represented by Michael J. Flanagan, Esq. of Coder, Tuel and Flanagan, 8801 Folsom Boulevard, Suite 172, Sacramento, California.

^{1/} All statutory references are to the California Vehicle Code.

6. Respondent was represented by Wallace M. Allan, Esq., of O'Melveny and Meyers, 400 South Hope Street, Los Angeles, California, and L. Joseph Lines, III, Esq., General Motors Corporate Staff, 515 Marin Street, Suite 226, Thousand Oaks, California.

ISSUES PRESENTED

7. The Protestants allege that good cause exists for not permitting the establishment of the proposed dealership in the Tustin Auto Mall for the following reasons:^{2/}

a. Protestant's investments are permanent, and will be adversely affected (Section 3063(a));

b. Such establishment will have an adverse affect on the retail motor vehicle business and the consuming public in the relevant market area (Section 3063(b));

c. Such establishment will be injurious to the public welfare (Section 3063(c));

d. The current GMC franchisees in the relevant market area^{3/} are providing adequate competition and convenient consumer care for the owners of GMC vehicles in the market area, including adequate motor vehicle sale and service facilities, equipment, supply of vehicle parts, and qualified service personnel (Section 3063(d)); and

^{2/} Section 3066 provides that Protestants have the burden of providing that there is good cause not to enter a franchise establishing an additional dealership.

^{3/} Vehicle Code section 507 defines "relevant market area" as any area within a radius of 10 miles from the site of a potential new dealership.

e. Such establishment will not increase competition and, therefore, will not be in the public interest (Section 3063(e)).

FINDINGS OF FACT

A. Facts Relating To Permanency Of The Investment (Section 3063(a))

8. The Guaranty dealership has been in operation since 1952 and has been in its present location since 1962. Robert Long has been a co-owner of Guaranty since 1975 and acquired a 100% interest in 1985.

9. The dealership is located on approximately 8-3/4 acres of land and is adjacent to Interstate 5 in Santa Anna. The property is occupied under the terms of a 52 year lease. Long borrowed approximately \$2.1 million to acquire and remodel the facilities. The showroom is approximately 10,000 square feet and the parts department is approximately 25,000 square feet.

10. The MacPherson dealership has been located at the Irvine Auto Center for 13 years. Joseph MacPherson has been the owner since the dealership's inception in 1977.

11. MacPherson Properties paid \$880,000 for the 8-1/2 acres of land it leases to the dealership. The 25 year lease provides for payments of \$35,000 per month. The buildings occupied by the dealership were constructed at a cost of \$1,200,000 and improvements amounted to \$600,000.

12. The Selman dealership was established in 1952 and has been at its present location at Orange since 1966. William Selman became the dealer in 1970 after the death of his father.

13. The dealership is located on approximately 8-1/3 acres of land leased for 55 years at \$18,000 per month. Selman owns the dealership facilities, which were built at a cost of \$925,000.

14. The proposed dealership will be located on approximately 3 acres of land in the Tustin Auto Center in an existing vacant automobile dealership facility. Lewis Webb has agreed to pay \$3.8 million for the property and facilities, with a commitment to spend the further sum of between \$175,000 and \$200,000 to be spent on renovations and improvements.

B. Facts Pertaining To The Effect On The Retail Motor Vehicle Business And The Consuming Public In The Relevant Market Area (Section 3063(b))

15. In the RMA surrounding the proposed Tustin dealership there are six (6) Chevrolet dealers which make up the dealer network. However one of these concentrates on Chevrolet's specialist models and sells few general line products, trucks or Geo^{4/} products.

16. To assess accurately the adequacy of the dealer network it is necessary to establish a reasonable standard for retail penetration. Such a standard maybe arrived at by calculating the popularity of each car and light truck segment nationally and adjusting that figure to reflect unique consumer preferences in the local market.

^{4/} Geo is the General Motors Import economy car, the franchise for which is generally offered to existing Chevrolet dealers.

17. Chevrolet has divided the Anaheim-Santa Ana Multiple Dealer Area ("MDA") into Areas of Geographic Sales and Service Advantage ("AGSSA"). An AGSSA is made up of census tracts or geographic areas which are closer and more convenient to the dealers to whom the census tract is assigned than other dealers of the same line-make. Each dealer or proposed dealer point in the MDA is assigned its own AGSSA. MacPherson is in AGSSA 14, Guaranty is in AGSSA 10, and Selman is in AGSSA 9. The proposed Tustin dealership will be in AGSSA 15.

18. In 1989, Chevrolet achieved a market penetration of 18.00% for all new retail car and light truck registrations nationwide. After unique consumer preferences in the RMA are taken into consideration, the expected penetration for Chevrolet in 1989 is 16.47% for the RMA. The following chart sets forth the actual and expected penetration for the time period and geographic areas so indicated :

RMA PENETRATION

Year	Actual	Expected	Percentage of Expected
1987	8.69	15.51	56.0
1988	9.98	16.14	61.8
1989	11.20	16.47	68.0
YTD 1990	10.10	16.55	60.8

AGSSA 15 TUSTIN DEALERSHIP

Year	Actual	Expected	Percentage of Expected
1987	7.25	15.08	48.1
1988	7.85	15.38	51.0
1989	8.51	15.85	53.7
YTD 1990	7.51	15.54	48.3

19. Of the 130 markets in California where Chevrolet is represented only two (2) had lower penetration rates in 1990 (YTD) than AGSSA 15, and at least forty (40) California markets exceeded the national average segment adjusted standard. Of the census tracts in the RMA, twenty-two (22) exceed the expected penetration standard of 16.47 for 1989.

20. There has been substantial population and household growth in the RMA between 1970 and 1990. The bulk of this growth is concentrated along the Interstate 5 and 405 corridor from Tustin to Irvine. This growth trend is projected to continue at least through 1994. The following chart sets forth the total population and households in the RMA for the time period indicated :

<u>Year</u>	<u>Total Population</u>	<u>RMA Households</u>
1970	685,133	213,506
1980	975,387	342,030
1990	1,203,496	434,020
1995(projected)	1,326,695	483,147

21. Population growth in AGSSA 15 has been strong increasing 45.37% between 1980 and 1990. In that same period the number of households has increased 50.80%. The following chart sets forth the total population and households in AGSSA 15 for the time period indicated :

<u>Year</u>	<u>AGSSA 15</u>	
	<u>Total Population</u>	<u>Households</u>
1970	42,887	13,443
1980	88,027	32,219
1990	127,961	48,587
1995(projected)	148,638	57,285

22. Between 1982 and 1990, car and light truck retail registrations in the RMA have grown from 44,833 to 68,709. Chevrolet retail registrations in the RMA, as a percentage of the nation, have increased a total of 21% in the period 1983 through 1990 from .52% to .63%.

23. Population and household growth by themselves contribute to congestion and the desire for greater accessibility and convenience to automobile dealerships. Density of new vehicle registrations in the RMA is clearly around the existing Chevrolet dealers. These dealers achieve their maximum penetration for vehicle sales within two (2) miles of their dealerships and penetration decreases steadily at distances further from the dealerships. With addition of the proposed point, the average distance for customers in the RMA to Chevrolet dealerships would be reduced from 4.8 miles to 2.4 miles.

24. Growth, coupled with higher than average income, contributes greatly to increased market potential for the sale of products like cars or trucks. Between 1980 and 1990, employment in Orange County increased approximately 33% from 1,067,100 to 1,379,000. There is a preponderance of upper income households of over \$40,000 per year in the RMA.

25. The market opportunity for Chevrolet in the RMA is almost the largest available per dealer than any market in California. As it presently exists the market opportunity for the expect to get adequate representation. There is ample opportunity from a total size point of view for this market to support an additional Chevrolet dealer.

26. Of the total of 118 dealer franchises in the RMA, six (6) are Chevrolet franchises. With the addition of a Tustin dealer, Chevrolet's dealer percentage representation in the RMA only would increase from 5.1% to 5.9%. This compares to Chevrolet's share of total franchises nationwide of 11.1%.

27. In 1989, the percentage of retail registrations into AGSSA 15 by the protesting dealers were MacPherson 8.0, Guaranty 7.9, and Selman 5.5. These penetration percentages are deemed not a significant share of the total vehicle sales of each of the protestant dealers.

28. In 1989, sales of Chevrolet into the RMA (insell) by Chevrolet dealers outside the RMA (ie "insell") was 2,901. In that same year, the gross registration loss to interbrand competitors was 3,747. The total lost sales opportunity for all Chevrolet dealers in the RMA was therefore 6,648 sales.

29. The projected retail registrations for the proposed Tustin AGSSA 15 dealer are 1,966. Had the new Chevrolet dealer gone into business and achieved that sales level, it would have absorbed 29.6% of the lost opportunity in the RMA. Since the total lost opportunity for the existing dealers is 6,648 sales, there would still exist a large lost opportunity for all Protestants to increase their retail sales, even if the proposed dealership were established and was as successful as projected.

30. With the addition of a "mature" dealership the protesting dealers could expect to have lost unit sales of 824 based on 1989 figures. Under this scenario net profit for the protesting dealers is estimated at \$1,004,467 for Selman, \$1,197,634 for Guaranty, and \$65,107 for MacPherson. As the

proposed dealership will not be "mature" until sometime between 1994 and 1996 the protesting dealers can anticipate maintaining profits in excess of these estimated figures.

C. Facts Pertaining To The Injury To Public Welfare
(Section 3063(c))

31. The Tustin AGSSA 15 proposed point is located adjacent to busy Interstate 5 in the Tustin Auto Mall. The optimal location for an additional Chevrolet dealership in AGSSA 15 is a point very near the proposed actual location. The freeway accessibility, proximity to competitors, local zoning, and presence within an auto mall with an existing vacant facility also favor the proposed location as the optimal location.

32. Webb is one of Southern Californians most successful and reputable dealers. Webb presently owns eight dealerships in Southern California and has received numerous awards from the various line-makes he represents. In 1990, Webb's Buick dealership was named by Buick as one of its "World Class" dealers.

33. Webb intends to hire approximately 60 employees and the City of Tustin will derive one per cent of its income its sales tax income if the proposed dealer is established.

D. Facts Relating To Whether The Franchises Of The Same Line-Make In That Relevant Market Area Are Providing Adequate Competition And Convenient Consumer Care For The Motor Vehicles Of The Line-Make In the Market Area Which Shall Include The Adequacy Of Motor Vehicle Sales And Service Facilities, Equipment, Supply Of Vehicle Parts, And Qualified Service Personnel.
(Section 3063(d))

34. All of the protestants have modern facilities in good locations. Each is sales effective and has been consistently profitable in recent years. Chevrolet Customer Satisfaction Indices

("CSI") for Guaranty and Selman are satisfactory, but MacPherson is well below average.

35. No one at Chevrolet has ever indicated to Guaranty, Selman or MacPherson that they have deficient or inadequate tools and equipment with which to service Chevrolet vehicles, nor that they have an inadequate or insufficient number of service technicians.

E. Facts Pertaining To Whether The Establishment Of An Additional Franchise Would Increase Competition And Therefore Be In The Public Interest
(Section 3063(e))

36. Webb is an innovative and aggressive dealer, whose presence in the Tustin market place is certain to stimulate the sales and service activities of the existing RMA Chevrolet dealers, and provide more competitive services for existing and potential Chevrolet customers.

37. The existing Chevrolet dealers in the RMA will benefit from the proposed new dealer participation in Chevrolet's advertising association. Webb also plans to spend between \$60,000 to \$70,000 per month in advertising and this will further stimulate the RMA market activity and Chevrolet potential sales for all existing dealers as well.

DETERMINATION OF ISSUES

The Protestants have failed to prove that there is good cause not to permit the establishment of an additional dealership in that:

1. Protestants established that their investments are permanent, but failed to establish that their investment would be adversely affected (Section 3063(a));

2. Protestants failed to establish that the establishment would have an adverse effect on the retail motor vehicle business and consuming public in the relevant market area (Section 3063(b));

3. Protestants failed to prove that the establishment would be injurious to the public welfare (Section 3063(c));

4. Protestants failed to establish that there is adequate competition and convenient consumer care in terms of sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel for Chevrolet in AGSSA 15 and the RMA (Section 3063(d));

5. Protestant failed to prove that the establishment would not increase competition, and therefore would not be in the public interest (Section 3063(e)).

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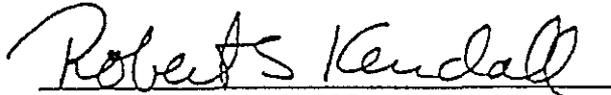
PROPOSED DECISION

THEREFORE, the following decision is respectfully proposed:

The Protests of the Protestants are overruled. Respondent Chevrolet Motor Division, General Motors Corporation shall be permitted to establish the additional dealership at 16 Auto Center Drive, Tustin, California.

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

Dated: August 19, 1991



ROBERT S. KENDALL
Administrative Law Judge
New Motor Vehicle Board