

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95811
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

RV READY,

Protestant,

v.

GULF STREAM COACH, INC.,

Respondent.

Protest No. PR-2153-09

In the Matter of the Protest of

RV READY,

Protestant,

v.

GULF STREAM COACH, INC.,

Respondent.

Protest No. PR-2178-09

DECISION

At its regularly scheduled meeting of May 5, 2010, the Public and Dealer Members of the Board met and considered the administrative record and Proposed Decision in the above-entitled matter. After such consideration, the Board adopted the Proposed Decision as its final Decision in this matter with the exception of the Administrative Law Judge's denial of payment of \$3,500 for a factory sales incentive at the Pomona Show, which amount is awarded

to Protestant. As indicated below, Respondent shall pay Protestant the \$3,500 sales incentive within 30 days from the date this decision becomes final.

Paragraph Nos. 61, 62, and 71 are amended as follows:

61. A retail sale of unit #11303 to Harold and Nancy Sparks occurred during the period October 13-24, 2008, as claimed by RV Ready. The one credit card deposit taken on October 19 does establish a consummated sale as do the signatures on the back of Exhibit 3. The Sparks admittedly could not come up with the required funds in the October 13-24, 2008 period, and did not until November 15, 2008. However, the sale was consummated during the Pomona Show.

62. Although there is conflicting testimony, the weight of the evidence compels a finding that there was a sale consummated during the October 13-24, 2008 Pomona Show.

71. RV Ready shall collect \$3,500 as an incentive promised on the sale of unit #11303 to the Sparks family during the Pomona Show.

The Proposed Decision is amended as follows:

Based on the evidence presented and the findings and determinations herein, IT IS HEREBY ORDERED THAT Respondent shall pay Protestant \$20,713.48 for warranty claims, \$6,000 for an incentive on the sale of a unit to the Callaways on May 21, 2009, and \$3,500 for an incentive on the sale of a unit to the Sparks at the Pomona Show for a total of \$30,213.48. The payment shall be paid by Respondent to Protestant within 30 days from the date this decision becomes final. In all other respects the protest is overruled.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 5th DAY OF MAY 2010.

ROBERT T. (TOM) FLESH
President
New Motor Vehicle Board

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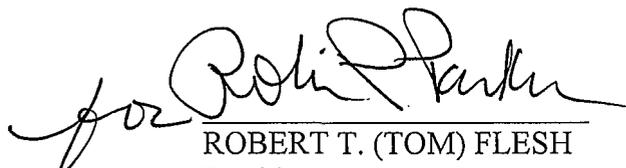
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8 STATE OF CALIFORNIA
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11 In the Matter of the Protest of

12 RV READY,

13 Protestant,

14 v.

15 GULF STREAM COACH, INC.,

16 Respondent.

Protest No. PR-2153-09

PROPOSED DECISION

17 In the Matter of the Protest of

18 RV READY,

19 Protestant,

20 v.

21 GULF STREAM COACH, INC.,

22 Respondent.

Protest No. PR-2178-09

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1 **FACTUAL BACKGROUND**

2 **Statement of the Case**

3 1. Protestant, RV Ready (hereinafter "Protestant" or "RV Ready"), located at 2106 West
4 Foothill Boulevard, Upland, California, is a new motor vehicle dealer and franchisee authorized to sell
5 Gulf Stream Coach, Inc. recreational vehicles under a franchise executed in 2007.

6 2. The Respondent and franchisor is Gulf Stream Coach, Inc. (hereinafter "Respondent" or
7 "Gulf Stream"), located at 503 South Oakland Avenue, Nappanee, Indiana. Gulf Stream is a licensed
8 manufacturer.

9 3. On April 2, 2009, RV Ready filed a protest (PR-2153-09) with the New Motor Vehicle
10 Board ("Board") alleging "Respondent violated the provisions of Vehicle Code¹ section 3075 by failing to
11 disapprove claims or pay them to Protestant."

12 4. On September 15, 2009, RV Ready filed a protest (PR-2178-09) with the Board alleging
13 Respondent has "failed to pay the monies owed to Protestant pursuant to incentive claims submitted ...
14 [and] Gulf Stream is in violation of section 3076."

15 5. On October 12, 2009, pursuant to stipulation of counsel and by order of the Board, these
16 protests were consolidated for purposes of hearing.

17 6. A hearing on the merits of the protest was held on December 21-22, 2009, before
18 Administrative Law Judge ("ALJ") Jerold A. Prod ("ALJ Prod").

19 7. After the submission of post-hearing briefs, the matter was deemed submitted on March
20 22, 2010.

21 8. Protestant is represented by Michael M. Sieving, Esq. and Tina Hopper, Esq. of the Law
22 Offices of Michael M. Sieving, 1801 Park Court Place, Suite F-101, Santa Ana, California.

23 9. Respondent is represented by Mark H. Nys, Esq. and Chandra E. Kiamilev, Esq. of
24 Klinedinst PC, 501 West Broadway, Suite 600, San Diego, California.

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28 ¹ All statutory references are to the California Vehicle Code unless indicated otherwise.

1 **PROCEDURAL BACKGROUND**

2 **RESPONDENT'S 1ST MOTION TO DISMISS**

3 10. On July 2, 2009, Gulf Stream filed a "Motion to Dismiss Protest" contending that
4 Protestant violated the terms of the franchise agreement by proceeding with an alternate legal remedy, i.e.
5 the Board.

6 11. On July 27, 2009, after the submission of briefs by each side, a hearing on the Motion to
7 Dismiss Protest was held before ALJ Anthony M. Skrocki ("ALJ Skrocki") during which questions were
8 raised about whether this is or is not a dispute that involves a product-related third party claim as that term
9 was used in the franchise agreement. Counsel for Respondent requested and was granted an opportunity
10 to submit further briefs; counsel for Protestant agreed to submit a brief in opposition thereto. On August
11 20, 2009, the hearing on the motion resumed.

12 12. On August 24, 2009, ALJ Skrocki issued an "Order Denying Respondent's Motion to
13 Dismiss Protest". The parties then proceeded with a discovery schedule and tentative date for the merits
14 hearing.

15 **RESPONDENT'S 2ND MOTION TO DISMISS**

16 13. On September 10, 2009, Gulf Stream filed "Respondent Gulf Stream Coach, Inc.'s Motion
17 to Dismiss Protest" contending that the terms of the franchise agreement provides that "all transactions
18 contemplated" by the agreement "shall be governed by, be construed, and enforced exclusively in the
19 courts of the State of manufacture [Indiana], and, in accordance with the laws of the state [sic] of
20 manufacture [Indiana]."

21 14. On September 21, 2009, after the submission of briefs by each side, a hearing on the
22 Motion to Dismiss Protest was held before ALJ Skrocki.

23 15. On September 22, 2009, ALJ Skrocki issued an "Order Denying Respondent's Motion to
24 Dismiss Protest". The parties then proceeded with a discovery schedule and tentative date for the merits
25 hearing.

26 **MOTIONS AT THE HEARING ON THE MERITS**

27 16. At the commencement of the hearing on the merits, prior to opening arguments,
28 Respondent Gulf Stream filed two motions. The first was a motion to dismiss two of Protestant's claims;

1 a request for payment of a \$3,500 incentive related to the Pomona Show (sale of unit #11303 to the
2 Sparks family), and a request for payment of a \$6,000 incentive related to the sale of unit #40480 to the
3 Callaway family. After consideration of the pleadings and oral arguments, ALJ Prod denied the motion.

4 17. The second motion was Respondent's motion in limine re: the Callaway deal, seeking to
5 compel the testimony of Nick Morgan (a 45% owner of Protestant), or in the alternative to exclude all
6 testimony and evidence related to the claim regarding the sale of a unit to the Callaways. ALJ Prod
7 deferred ruling on Respondent's motion in limine when initially filed, and it was ultimately not ruled
8 upon as Nick Morgan's testimony was taken via telephone on day two of the hearing.

9 **WITNESSES²**

10 18. Sammy Khalilieh, the president and 55 percent owner of Protestant RV Ready testified on
11 behalf of Protestant. (RT I, pp. 74-75)

12 19. Nick Morgan, a 45 percent shareholder of RV Ready testified as an adverse witness on
13 behalf of Respondent. (RT I, p. 75)

14 20. David Middleton, national sales manager for the motorized division of Respondent Gulf
15 Stream testified on behalf of Respondent. (RT I, p. 148)

16 21. Claude Donati, vice president of the motorhome division of Gulf Stream testified on behalf
17 of Respondent. (RT II, p. 292)

18 **ISSUES PRESENTED**

19 22. The total amount claimed in Protest Nos. PR-2153-09 and PR-2178-09 by Protestant RV
20 Ready from Respondent Gulf Stream is \$54,375.11.³ This is broken down into five categories.

21 23. Pursuant to Section 3066(c), Protestant has the burden of proof.

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26 ² The Reporter's Transcript ("RT") is identified by volume. Exhibits are identified by number only, as at the conclusion of
27 the hearing Protestant's and Respondent's exhibits were combined in sequential, numbered order. They are described as
appropriate in the body of the Proposed Decision.

28 ³ This is calculated as follows: \$20,713.48 in warranty claims; \$3,500 incentive rebate at the Pomona Show; \$5,000 incentive
rebate at the Las Vegas Show; \$6,000 incentive rebate for the Callaway unit; and \$19,161.63 for interest reimbursement.

1 VEHICLE CODE SECTION 3075⁴ CLAIMS

2 Warranty Claims

3 24. Counsel for Protestant and Respondent stipulated that \$20,713.48 in warranty claims have
4 been submitted by Protestant and Respondent has approved those claims. (RT I, pp. 72-73) Protestant
5 alleges this amount, although approved within 30 days pursuant to the provisions of Section 3075, has not
6 been paid. (RT I, p. 50)

7 25. The only remaining question on this issue is whether Respondent can, as payment and/or in
8 lieu of payment, offset \$20,713.48 against \$250,000 alleged to be owed by Protestant to Respondent
9 arising out of losses sustained by Respondent in connection with an obligation to repurchase several units
10 from Bank of America. This will be addressed in the Determination of Issues section, *infra*.

11 VEHICLE CODE SECTION 3076⁵ CLAIMS

12 26. The remaining four categories are claims pursuant to the provisions of Section 3076
13 relating to franchisor incentive program reimbursement.

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17 ⁴ Section 3075 provides, in part, as follows:

18 ...
19 (d) All claims made by franchisees pursuant to this section shall be either approved or disapproved within 30
20 days after their receipt by the franchisor. A claim not specifically disapproved in writing within 30 days from
21 receipt by the franchisor shall be deemed approved on the 30th day. When a claim is disapproved, the franchisee
22 who submits it shall be notified in writing of its disapproval within the required period, and the notice shall state
the specific grounds upon which the disapproval is based. All claims made by franchisees under this section and
Section 3074 for labor and parts shall be paid within 30 days following approval. Failure to approve or pay
within the above specified time limits, in individual instances for reasons beyond the reasonable control of the
franchisor, do not constitute a violation of this article.

22 ...
23 ⁵ Section 3076 provides as follows:

24 (a) All claims made by a franchisee for payment under the terms of a franchisor incentive program shall be
25 either approved or disapproved within 30 days after receipt by the franchisor. When a claim is disapproved, the
26 franchisee who submits it shall be notified in writing of its disapproval within the required period, and each
27 notice shall state the specific grounds upon which the disapproval is based. A claim not specifically disapproved
28 in writing within 30 days from receipt shall be deemed approved on the 30th day. Following the disapproval of a
claim, a franchisee shall have one year from receipt of the notice of disapproval in which to appeal the
disapproval to the franchisor and file a protest with the board. All claims made by franchisees under this section
shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits,
in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation
of this article.

...

1 **The Pomona Show**

2 27. Protestant seeks payment for a factory rebate incentive of \$3,500 promised by Gulf Stream
3 for an RV allegedly sold to Harold and Nancy Sparks during the October 13-24, 2008 rebate period. (RT
4 I, pp. 51-52) Respondent contends that whatever may have transpired between the Sparks' and Protestant
5 during the October 13-24 period was incomplete, and that the final agreement signed November 15, 2008
6 was outside the rebate period and the \$3,500 incentive payment is therefore not owed. (RT I, p. 68)

7 **The Las Vegas Show**

8 28. Protestant claims that \$5,000 out of \$29,000 in factory rebate promises made for RVs
9 purchased at the show remain unpaid, as some vehicles were substitutes for those on the original list (see
10 paragraph 44), and qualify for the incentive payments. (RT I, pp. 56-57) Respondent contends that there
11 was no agreement to pay for certain substituted RVs claimed, and that they were a separate purchase by
12 Protestant from Respondent outside the confines and terms of the Las Vegas Show deal. (RT I, pp. 69-
13 70)

14 **The Callaway Unit**

15 29. Protestant claims it is owed \$6,000 as an unpaid incentive rebate for the sale of a particular
16 unit sold to Mark Callaway that Respondent was obligated to repurchase from Bank of America. (RT I, p.
17 61) Respondent states that the Callaway unit was sold on May 21, 2009, outside the rebate period for that
18 vehicle which did not begin until May 22 at the earliest. (RT I, pp. 181-182)

19 **Interest Reimbursement**

20 30. Protestant claims the existence of an agreement by Respondent early in 2008 to provide
21 free flooring, or reimbursement of interest paid by Protestant, on four vehicles in the amount of
22 \$19,161.63. (RT I, pp. 59-61) Respondent denies that any such agreement was ever consummated,
23 contending that it would have made no business sense at all. (RT I, pp. 65-67)

24 **TESTIMONY REGARDING BUSINESS DEALINGS BETWEEN**
25 **PROTESTANT AND RESPONDENT GENERALLY**

26 31. David Middleton, national sales manager for the motorized division of Respondent Gulf
27 Stream, stated that the types of incentive deals negotiated between Gulf Stream and its dealers, including
28 RV Ready, are: allowances, rebates, interest, show co-op, and sales spiffs. The general practice is that,

1 when there is talk about deals and agreements, proposals are sent out; but when an agreement is reached
2 there is always a formal correspondence letter memorializing it. (RT I, p. 150)

3 32. The letter is written up by a secretary and sent over for signature so that the agreement is
4 documented. It is given a correspondence number for tracking purposes. David Middleton testified
5 additionally that any deviation from Gulf Stream incentive offers must be approved by a manager and two
6 vice presidents. Then and only then is it an agreement. (RT I, pp. 151-152)

7 33. When dealing with finalized incentive agreements sales representatives do not have
8 authority to create the final document. Only the national sales manager (in this case David Middleton)
9 has the authority to do that. (RT I, p. 152) Regarding deviations, what comes out of the sales office has
10 to be approved by him, and signed off by the vice president of motorized, and then the vice president of
11 operations. This policy is not communicated in written form but is shared with dealers who are generally
12 aware of it as being "... just common practice in our industry." (RT I, pp. 151-152, 190-193)

13 34. Every correspondence letter, in addition to having an assigned correspondence number,
14 contains a notification that any agreement or commitment binding on Gulf Stream must be in writing and
15 signed by Brian Shea or Don Shea. (See e.g. Exh. 4, p. 1) In fact, Mr. Middleton testified the letters are
16 never signed by either Brian Shea or Don Shea. (RT I, p. 193) He acknowledged that there are informal
17 agreements reached between Gulf Stream and its dealers, although it is not their policy and happens
18 somewhat less that "...quite regularly." (RT I, p. 209)

19 35. Sammy Khalilieh testified that there have been agreements made over the telephone, and
20 that this is "...very common in our industry." (RT II, p. 280) He was never told that Gulf Stream's
21 internal policies required written approval by the national sales manager, the vice president of motorized,
22 and the vice president of operations for any incentive agreement or deviation. (RT II, pp. 284-285)

23 **TESTIMONY REGARDING THE POMONA SHOW**

24 36. The Pomona Show is held annually at the Pomona fairground (in Los Angeles County). It
25 is an occasion where RV manufacturers and dealers have an opportunity to introduce new models to the
26 invited public and hopefully to generate a lot of sales. (RT I, p. 80) The Pomona Show in 2008 took
27 place during October 13-24. (Exh. 3) Factory sales incentives were offered to RV Ready by Gulf Stream
28 prior to the 2008 Pomona Show for a few units identified by unit number.

1 37. One of these was a unit (#11303) sold to Harold and Nancy Sparks. The first page of
2 Exhibit 3 is certificate #00136, offering \$3,500 as a "Factory Assistance Retail Rebate" by Gulf Stream
3 applicable as a down payment on unit #11303. The second page contains only what were stated to be the
4 undated signatures of Harold and Nancy Sparks.

5 38. Certificate #00136 by its terms provides that it applies to a retail sale made at the Pomona
6 Show during the period October 13-24, 2008 only. Sammy Khalilieh testified that RV Ready did sell that
7 unit at the Pomona Show to the Sparks. He was not present during the sale. RV Ready took two \$500
8 deposits on a credit card "...that day at the show." (RT I, p. 84) One of the credit card receipts is dated
9 October 19, 2008; the other is dated November 15, 2008. (Exh. 10) A "553", or "Retail and Installment
10 Sale Contract", was allegedly signed by the Sparks during the Pomona Show (presumably on October 19,
11 2008); although Sammy Khalilieh did not personally see the contract signed. (RT I, pp. 84, 93-94)

12 39. RV Ready had a hard time getting the Sparks financed. Mr. Sparks eventually got his own
13 loan by refinancing his home. It took about three to four weeks after the Pomona Show for the funding of
14 the unit to take place. (RT I, pp. 86-87)

15 41. On November 15, 2008 a new retail contract or "553" was signed at RV Ready and the
16 Sparks' took delivery and drove the vehicle off the lot on that date. (RT 88-90, Exh. 3, pp. 3-6) The
17 "553" allegedly signed during the October 13-24 Pomona Show was shredded "... as usual". (RT I, pp.
18 92-93) Certificate #00136 (the \$3,500 rebate form) was not sent to Gulf Stream for payment until
19 December 9, 2008. (Exh. 3, p. 7)

20 42. Sammy Khalilieh explained that customers are made to sign a contract immediately (at the
21 show) so they are committed, when they are excited, and then are "re-contracted" later, usually within a
22 week. This saves the customer DMV fees and gives the dealer finance department another shot at the
23 customer to sell add-ons. At that point, the earlier contract is shredded to avoid saving two contracts.
24 (RT I, pp. 95-98)

25 43. Had Gulf Stream received the "553" dated November 15, 2008 along with the executed
26 rebate form, it would not have paid the rebate according to Mr. Middleton. Because of the re-contracting,
27 the sale fell about a month outside of the October 13-24 parameters of the rebate program, and Gulf
28 Stream was not informed of the circumstances at the time of the alleged sale or at the end of the Pomona

1 Show. (RT I, pp. 175-178, 211-213)

2 TESTIMONY REGARDING THE LAS VEGAS SHOW

3 44. The Las Vegas show is put on by Gulf Stream to introduce new models to dealers. Dealers
4 are wined and dined, and hopefully enticed to place orders. The show took place in May 2008. (RT I, p.
5 107) Sammy Khalilieh sketched out a deal on a scratch notepad, which was later memorialized in an
6 August 13, 2008 letter from Gulf Stream to him. The Gulf Stream signatory is Joe Luther, national sales
7 manager, Conquest Motorhomes. The deal noted 13 specific units to be ordered by RV Ready with a total
8 rebate of \$29,000 listed for 12 of the units as follows:

9

Brand	Serial #	Floorplan	Allowance	Rebate
Supernova	40567	6400	\$12,500	\$2,500
Supernova	40520	6400	\$12,200	\$2,500
Supernova	40519	6341	\$12,500	\$2,500
Supernova	40471	6373	\$12,500	\$2,500
Supernova	40480	6400	\$12,500	\$2,500
Supernova	40690	6373	\$12,500	\$2,500
Supernova	40693	6341	\$12,500	\$2,500
Supernova	40787	6400	\$12,500	\$2,500
Supernova	40728	6373	\$12,500	\$2,500
Supernova	40768	6331	\$12,500	\$2,500
Yellow Cruiser	40522	5291GX2	\$10,125	\$2,000
Yellow Cruiser	40502	5291GX2	\$10,125	\$2,000
Yellow Cruiser	40692	63110YK	\$ 8,000	

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(RT 109, Exh. 4, p. 1)

17 45. The second page of Exhibit 4 notes a check to RV Ready for \$24,000 and a list of 10 units
18 in part as follows:

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...	SERIAL	...	REBATE	PAID	...
	40567		2,500	07/08/08	
	40520		2,500	06/30/08	
	40519		2,500	06/30/08	
	40471		2,500	06/05/08	
	40480		2,500	07/16/08	
	40522		2,000	06/30/08	
	40502		2,000	06/30/08	
	40690		2,500	09/23/08	
	40693		2,500	09/09/08	
	40712*		2,500	10/07/08	
			24,000.00		

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26 * This serial number is not listed on page 1 of Exhibit 4.

27 There is a hand-written notification saying "\$5,000 still owe RV Ready". (Exh. 4, p. 2) The 10 units
28 listed on page 2 are not all listed on page 1 (serial # 40712 is not listed on page 1). Sammy Khalilieh

1 testified that one unit listed on page 2 was substituted for one listed on page 1, and a rebate was paid for
2 that. He said that others were also substituted, but he was "... not sure how many. I know we fulfilled
3 more than we had fulfilled for our order. We bought more than this amount of units. We kept buying and
4 selling." (RT I, pp. 114-115, Exh. 4, p. 2) The third page of Exhibit 4 is a communication from Sammy
5 Khalilieh to his counsel, stating "Here is the email that I sent Joe Luther confirming that we met our
6 obligation from the Vegas 2008 deal, in fact we exceeded by one." Eleven Super Novas are listed by unit
7 number. (Exh. 4, p.3)

8 46. Substitution of units, for purposes of this rebate program, was explained generally by
9 Sammy Khalilieh as follows: One or more units listed on the rebate deal may not have been built yet.
10 (Exh. 4, p. 1) Another unit elsewhere may have been sold to a customer who could not pay for it, or if
11 business is slow for another dealer, units could "open up" for purchase or substitution. He was called by
12 Brian Atkinson, Conquest representative of Gulf Stream, who stated that a unit or units were available
13 now in lieu of units ordered by RV Ready but not yet built. (RT I, pp. 111-112) Sammy Khalilieh
14 testified that he did purchase newly available units for at least some of those listed on page 1 of Exhibit 4.
15 (RT I, pp. 111-112) He claims to still be owed \$5,000.

16 47. Joe Luther told Sammy Khalilieh that the reason for not paying the full \$29,000 was "...
17 well, you didn't order all the units." Sammy Khalilieh then dug out all the serial numbers, but "...I
18 probably did just enough to show them that I fulfilled my commitment for the Vegas deal ..." (RT I, pp.
19 116-117)

20 48. David Middleton testified as follows: \$24,000 was sent to RV Ready in good faith
21 because pursuant to the deal set forth in Exhibit 4, page 1, "... they took most of them ..." (RT I, p. 183)
22 He acknowledged that it was common to substitute vehicles in and out of deals, but that needed to be
23 documented. There was in fact one deviation to the Las Vegas deal allowed. (RT I, pp. 184-186) The
24 Las Vegas deal for the rebates was not to buy any particular number of units, but rather to buy particular
25 units unless there is a properly approved deviation. (RT I, pp. 186-188) Gulf Stream is, however,
26 asserting a right to recover the \$24,000 already paid. (RT I, p. 187, Respondent's Opening Brief, p. 10)

27 **TESTIMONY REGARDING THE CALLAWAY DEAL**

28 49. Exhibit 6 documents a communication from Claude Donati of Gulf Stream to RV Ready. It

1 is dated May 27, 2009, and references a rebate list of May 22, 2009. The narrative states, "This is the
2 rebate program presented to RV Ready which will be able (sic) aside from any other discrepancy between
3 our organization. This program will be available until we repurchase these units as required by the Bank
4 Of America demand letter. ..." The second page is a list of nine units that were surrendered by RV Ready
5 to Bank of America, which Gulf Stream was obligated to re-purchase from Bank of America:

	Serial	...	Rebate
6	1	11920	\$10,000
7	2	11930	\$10,000
8	3	11932	\$10,000
9	4	40480	\$ 6,000
10	5	40522	\$ 3,000
11	6	40471	\$ 7,000
	7	40502	\$ 7,000
	8	11813	\$ 6,000
	9	11718	\$10,000

12 At the bottom of the list is a notation "offer is good through June 30th." (Exh. 6, pp 1-2) The fourth unit
13 on the list, showing a rebate of \$6,000 was sold to the Callaways on May 21, 2009. (Exh. 6, pp. 3-8)

14 50. Sammy Khalilieh testified that Gulf Stream agreed to the rebates listed in Exhibit 6
15 "somewhere in mid May ...because they didn't want to buy them back". (RT I, p. 135) RV Ready would
16 not have sold the unit to the Callaways without the \$6,000 rebate, which had been agreed to prior to the
17 May 21 sale. (RT I, p. 139) RV Ready would have sustained no loss had the unit been repurchased, so it
18 had no reason to sell it at a loss or for no gain. (RT II, pp. 287-288)

19 51. Claude Donati of Gulf Stream testified that Bank of America had, on or around May 21 or
20 22, notified RV Ready that they were going to have Gulf Stream "... pick up the inventory." In "...an
21 effort to try to minimize our losses...I remember us trying to get some rebates for the customers on those
22 units". (RT II, p. 310) He remembers the discussion to pay certain incentives if RV Ready were to sell
23 these units, and does not believe this was ever memorialized in a formal written agreement with a
24 correspondence number. This could have been for several reasons. Gulf Stream was still trying to figure
25 out which units were subject to repurchase. (RT II, pp. 310, 315)

26 52. Exhibit 11 consists of a series of emails between Nick Morgan of RV Ready and Claude
27 Donati of Gulf Stream. The emails reflect a discussion of how to handle the rebate transaction, with some
28 reference to earlier mistrust between RV Ready and Gulf Stream on other matters. (RT I, pp. 141-143)

TESTIMONY REGARDING INTEREST REIMBURSEMENT

53. Sammy Khalilieh, on the first day of the hearing, stated that some time in February of 2008 he orally reached a deal with David Middleton to reimburse RV Ready for all interest payments RV Ready would have to make until the end of December 2008 on four units listed on the first page of Exhibit 5. (RT 119-121) Mr. Khalilieh stated that the person he dealt with on this matter at Gulf Stream was David Middleton, and that Exhibit 5 was the document sent or faxed to him to confirm the agreement. The four units listed, in part, are as follows:

	SERIAL	...	ADDITIONAL ALLOWANCE	IR UNTIL DEC. 31, 2008
1	11537		\$4,875	YES
2	11691		NO EXTRA ALLOWANCE – ADD PAINT	YES
3	11388		\$3933 – FREE FREIGHT & ADDT’L \$1000	YES
4	10314		\$14,656	YES

(Exh. 5, p. 1)

There is a handwritten note on the first page of Exhibit 5; “These units will be interest reimburse till end Dec 08”. Sammy Khalilieh believes this note was written by his wife or another girl in the office. The heading at the top of the page says “AUTO READY.” There is no other identifier. (RT I, pp.123-124, Exh. 5, p. 1)

54. Sammy Khalilieh further stated that he would not have purchased these units without reliance on the oral agreement (allegedly documented by Exhibit 5) reached with David Middleton. (RT I, pp. 128-129) By way of explanation he testified that, regarding this and other agreements with Gulf Stream, they are often quite informal “... most reached over dinner, golf course, Las Vegas, some sort of an outing. We just make a deal, shake hands”. (RT I, p. 146) There was one prior occasion on which Gulf Stream reimbursed RV Ready for interest charges. (RT I, pp. 121, 144-145, see also Exhs. 7 and 17)

55. David Middleton “unequivocally” stated that he did not have the discussion in February 2008 regarding interest reimbursement that was testified to by Sammy Khalilieh. Regarding Exhibit 5, he did not prepare it and at best it would have been a proposal. (RT I, p. 162)

56. On the second day of the hearing Sammy Khalilieh still maintained at one point that the oral deal was made with David Middleton. (RT II, p. 285) Upon questioning, he then stated that he actually negotiated the deal with Mr. Atkinson, who evidently could not commit Gulf Stream. It was then that Mr. Middleton got on the phone. (RT II, p. 286)

1 57. Explaining Respondent's usual practice in this regard, David Middleton stated that a lot of
2 times a salesman will, on the phone, propose units, and say "... what will it take? Give me something to
3 take to the table." (RT I, p. 162) It may later be handwritten or put on a matrix like page 1 of Exhibit 5.
4 (Exh. 5, p. 1) At that point Gulf Stream would, if approving, put it on a formal page with a re-cap letter,
5 or deny it. (RT I, pp. 162-163, see Exh. 17).

6 58. David Middleton's guess was that the sales representative at the time prepared Exhibit 5.
7 It was never presented to him for approval. He stated unequivocally that Gulf Stream did not enter into
8 this interest reimbursement deal and never would have. (RT II, pp. 163-164, 170)

9 59. Over the last two years David Middleton talked with Sammy Khalilieh and with Nick
10 Morgan, each probably eight to ten times. Interest reimbursement was never brought up orally or in
11 writing by either one, although he opined that for that amount of money (over \$19,000) over that amount
12 of time they would have been screaming for it. (RT I, pp. 167-168)

13 FINDINGS OF FACT⁶

14 WARRANTY CLAIMS - SECTION 3075

15 60. Per stipulation of counsel, \$20,713.48 in warranty claims have been submitted by RV
16 Ready to Gulf Stream and approved.

17 FRANCHISOR INCENTIVE PROGRAM CLAIMS - SECTION 3076

18 The Pomona Show

19 61. A retail sale of unit #11303 to Harold and Nancy Sparks occurred on November 15, 2008,
20 and not during the period October 13-24, 2008 as claimed by RV Ready. The only documented evidence
21 of an actual sale of this unit is the contract dated November 15, 2008. The one credit card deposit taken
22 on October 19 does not establish a consummated sale on that date, nor do the undated signatures on the
23 back of Exhibit 3. The Sparks admittedly could not come up with the required funds in the October 13-
24 24, 2008 period, and did not until November 15, 2008.

25 62. Sammy Khalilieh claims that a contact of sale was executed at the Pomona Show, but he
26

27 ⁶ The references to testimony, exhibits, or other parts of the record contained herein are examples of the evidence relied upon to
28 reach a finding, and are not intended to be all-inclusive. Findings of Fact are organized under topical headings for readability
only and are not to be considered relative to only the particular topic under which they appear.

1 was not there and did not see a contract executed; nor did he see the alleged October 2008 contract
2 shredded on November 15 as alleged when the documented sale took place on that day. He stated that
3 sales are often recontracted at a later date and an earlier agreement shredded, but in this case the delay
4 was almost a month and Gulf Stream was not informed of an October sale at any time during the October
5 13-24 Pomona Show. Although there is conflicting testimony, the weight of the evidence compels a
6 finding that there was no actual sale consummated until November 15, 2008, and not during the October
7 13-24, 2008 Pomona Show.

8 **The Las Vegas Show**

9 63. Sammy Khalilieh's claim that two units substituted for others listed in Exhibit 4
10 documenting the 13 unit rebate deal were informally approved is not persuasive for two reasons. First, by
11 his admission one properly approved deviation from the rebate deal was approved. Second, regarding the
12 other substitutions not documented as having been approved, his testimony was simply that RV Ready
13 purchased more than the 13 units delineated in the Las Vegas Show deal. He stopped seeking evidence in
14 his own records to back his claim as soon as he reached what he thought was a required number of units
15 ordered.

16 64. This indicates, at best, a misunderstanding of the terms of the deal, which was not for a
17 specific number of units ordered. To qualify for the rebates, only designated units or agreed and approved
18 substituted units must be ordered; not simply a number of units equal to the total (13) in the Las Vegas
19 deal. The existence of one properly approved deviation raises an inference that the terms of the deal were,
20 at least at one point, properly understood.

21 **The Callaway Deal**

22 65. The testimony and documentary evidence supports a finding that Gulf Stream did in fact
23 offer and agree to a \$6,000 rebate for a unit sold to the Callaways. Gulf Stream alleges a rebate period
24 commencing on May 22, 2009, and that the May 21 sale to the Callaways falls outside the rebate period.
25 The May 22 date, however, is only the date of a rebate list; it is not a definitive indication of a rebate
26 period with a beginning date and ending date.

27 66. The series of emails between Claude Donati and Nick Morgan clearly describes an
28 agreement made earlier aside from any other dealings between Gulf Stream and RV Ready. The

1 substance of the emails concerns not whether payment is to be made, but rather how payment is to be
2 made, despite an ongoing atmosphere of mistrust between the parties on other matters. There is no
3 compelling testimony or evidence contra-indicating the existence of the agreement.

4 **Interest Reimbursement**

5 67. There is a direct conflict in the testimony of Sammy Khalilieh and David Middleton. Mr.
6 Khalilieh states unequivocally that he negotiated the interest reimbursement deal described in paragraph
7 53 and Exhibit 5 with Mr. Middleton. Mr. Middleton unequivocally denies making any such deal.

8 68. The weight of the evidence compels a finding that the interest reimbursement deal was
9 never finalized. Sammy Khalelieh later modified his testimony to a statement that he actually negotiated
10 with Brian Atkinson, and that David Middleton later just “got on the phone” (see paragraph 56). Exhibit
11 5 likewise supports a finding that the interest reimbursement matter was at best a proposal; by whom is
12 actually subject to question. The document does not appear in any way to be a Gulf Stream confirmation
13 of an agreement by it to provide interest reimbursement for payments made on four vehicles from
14 February 29 to December 31, 2008.

15 **DETERMINATION OF ISSUES**

16 **WARRANTY CLAIMS – SECTION 3075**

17 69. Gulf Stream shall pay RV Ready \$20,713.48. Gulf Stream’s contention that it can simply
18 credit RV Ready with a reduction of a much larger amount (about \$250,000) allegedly owed to Bank of
19 America is rejected. Respondent argues that the October 22, 2006 Application for Dealership (Exh. 31)
20 contains language that can be construed as a commitment by RV Ready to allow for offset of the
21 \$20,713.48 of approved warranty claims against its alleged debt to Bank of America (see Exh. 31).

22 70. The 2007 Dealer-Manufacturer Agreement (attached as Exhibit 1) states that it is the entire
23 agreement between the parties, and supersedes all prior understandings or agreements. There is nothing
24 in it that would incorporate by reference any of the terms in the Application for Dealership (Exh. 31);
25 which, it must be noted, is not an agreement duly executed by both parties. Also, the alleged \$250,000 or
26 so owed by Gulf Stream to Bank of America was never proven. Section 3075 clearly contemplates
27 compensation of “...each of its franchisees for labor and parts ...”, and not an offset against an
28 undocumented amount allegedly owed contractually to a third party, to which contractual arrangement the

1 franchisee is not a party.

2 **FRANCHISOR INCENTIVE PROGRAM CLAIMS - SECTION 3076**

3 **The Pomona Show**

4 71. RV Ready shall not collect nor does Gulf Stream owe \$3,500 as an incentive allegedly
5 promised on the sale of unit #11303 to the Sparks family.

6 **The Las Vegas Show**

7 72. RV Ready shall not collect nor does Gulf Stream owe \$5,000 in addition to the \$24,000
8 paid as incentives for ordering and/or purchasing vehicles at the May 2008 Las Vegas show.

9 73. Gulf Stream shall not, however, recover the \$24,000 already paid as incentives related to
10 that show. In support of a claim that all monies paid are recoverable, it cites language in Exhibit 4
11 claiming that "... any cancellation will result in voiding on this program." It is noted that this appears on
12 the same form that allegedly requires the signature of Brian Shea or Don Shea, which is admittedly never
13 actually done or required. As noted above (paragraphs 31-35), dealings between the parties are replete
14 with these inconsistencies and a general lack of rigor regarding formal requirements. The \$24,000 was
15 paid in good faith and cannot be recovered in this proceeding.

16 **The Callaway Deal**

17 74. Gulf Stream shall pay RV Ready \$6,000 as an incentive offered for the sale of the unit sold
18 to the Callaways on May 21, 2009. This is an example of a deal made outside the confines of formal
19 procedure and documentation. As set forth in paragraphs 49-52 this agreement was consummated orally
20 and agreed to as documented by an exchange of emails.

21 **Interest Reimbursement**

22 75. RV Ready shall not recover \$19,161.63 alleged to be owed as an incentive promised for
23 interest reimbursement or flooring charges to be incurred for four vehicles from February 29, 2008 to the
24 end of December 2008. No deal to assume this obligation was ever consummated.

25 ///

26 ///

27 ///

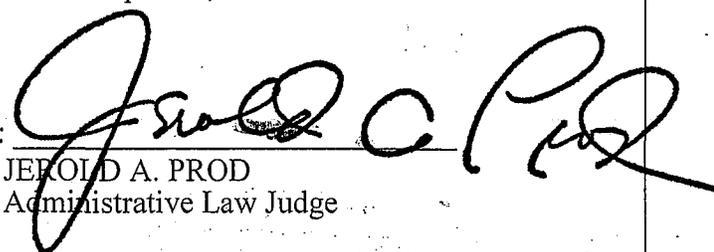
28 ///

1 PROPOSED DECISION

2 Based on the evidence presented and the findings and determinations herein, IT IS HEREBY
3 ORDERED THAT Respondent shall pay Protestant \$20,713.48 for warranty claims and \$6,000 for an
4 incentive on the sale of a unit to the Callaways on May 21, 2009, for a total of \$26,713.48. The payment
5 shall be received by Protestant within 30 days from the date this decision becomes final and is approved
6 by the Board. In all other respects the protest is overruled.

7
8 I hereby submit the foregoing which constitutes my
9 Proposed Decision in the above-entitled matter, as
10 the result of a hearing before me, and I recommend
11 this Proposed Decision be adopted as the decision of
12 the New Motor Vehicle Board.

13 DATED: April 21, 2010

14 By: 

15 JEROLD A. PROD
16 Administrative Law Judge
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27 George Valverde, Director, DMV
28 Mary Garcia, Branch Chief,
Occupational Licensing, DMV

CONQUEST

MOTORHOMES

Division of Gulf Stream Coach, Inc.

Dealer-Manufacturer Agreement

This Agreement is made and entered into between ~~Auto Ready Inc dba RV Ready, 2406 W. Foothill Blvd, Upland, CA 91786 (Dealer)~~ and ~~Gulf Stream Coach, Inc., P.O. Box 1005, Nappanee, Indiana 46550 (Manufacturer)~~ on the 12 day of January, 2007.

NEW MOTOR	
VEHICLE BOARD	
Exhibit	P-1
File No.	PR-2153-09

WITNESSETH:

WHEREAS, Manufacturer manufactures recreational vehicles; and

WHEREAS, Dealer sells recreational vehicles at retail as an independent dealership; and

WHEREAS, the parties desire to do business as independent businesses

NOW, THEREFORE, in consideration of the mutual promises made herein the parties agree to the following:

Dealer is authorized to sell the following model lines only: **Yellowstone Class C, Yellowstone Super C** manufactured by Manufacturer. No agency relationship exists between Dealer and Manufacturer. Dealer's authorized market area includes **San Bernardino County. See amendment**

Dealer must obtain written approval from Manufacturer prior to moving the recreational vehicles covered in the Agreement from its approved sales location to any other location where it is offering said recreational vehicles for sale.

Dealer agrees to follow the Manufacturer's service policies and procedures as set forth in Manufacturer's service manual and bulletins.

Dealer agrees to keep in stock or on order, at all times: **(4) Four Yellowstone Class C, (4) Four Yellowstone Super.** A quarterly inventory will be conducted. In the event stocking levels are **NOT** maintained, dealer will no longer qualify for the aforementioned programs. Pre-approval by Financial Institution is required on all units produced. Failure to obtain pre-approval from your Financial Institution may result in forfeiture of any programs.

Dealer agrees that advertising any pricing other than M.S.R.P, outside his agreed market area is prohibited. In specific, Internet advertising of any Gulf Stream Motor Home brand at pricing below M.S.R.P. is prohibited. Any violation may result in termination of Dealer Manufacturer Agreement (DMA) with Gulf Stream Coach, Inc., Motorized Division.

By doing business pursuant to this agreement, both Dealer and Manufacturer agree that prior to pursuing other legal remedies they shall submit to the RVIA mediation Program for resolution any disputes that arise in the course of their business relationship that do not involve product-related third party claims. In the event that the dispute cannot be resolved through mediation, the dispute may, at the option of the Manufacturer, be submitted to arbitration.

The contract of sale of each recreational vehicle sold by Gulf Stream shall be construed as having been completed in the State of Indiana. All selling prices quoted are FOB Nappanee, IN.

Term – Calendar year 2007 unless terminated earlier by Manufacturer.

Governing Laws and Venue - This agreement and all transactions contemplated hereby shall be governed by, be construed, and enforced exclusively in the courts of the State of manufacture, and, in accordance with the laws of the state of manufacture.

Any agreement or commitment binding on manufacturer must be in writing and signed by Brian Shea or Dan Shea.

Gulf Stream Coach reserves the right to change pricing or specifications without notice.

Correspondence #4385 -MW

Confidentiality - The parties agree that the terms of this Agreement shall remain confidential and shall not be disclosed to persons or entities not parties to this agreement.

Entire Agreement - The agreement constitutes the entire Agreement between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior understandings or agreements between the parties.

Penalty - If unit(s) are cancelled by dealer, the cost of reselling units will be withdrawn from the dealer's DVR (Dealer Volume Rebate), or Co-Op Fund. All orders must be signed and approved by the dealer to assure compliance.

Modification - This Agreement may not be modified, altered or amended in any manner except by an agreement in writing duly executed by the parties hereto.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above.

R. V. Neary (Dealer)

By: [Signature] (Owner)

Subscribed and sworn to me this 14 day of FEBRUARY 2007.

Notary Public

My Commission Expires:
County:
County of Residence:

[Signature]
National Sales Manager

GULF STREAM COACH, INC. (Manufacturer)

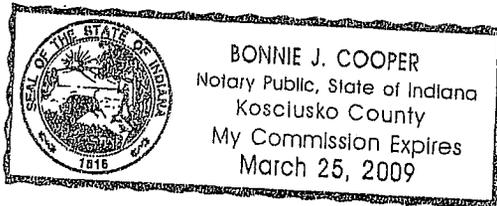
By: [Signature]
National Sales Manager

By: [Signature]
Brian Shea, President

Subscribed and sworn to me this 5th day of April, 2007.

Notary Public [Signature]

My Commission Expires:
County:
County of Residence:



Any agreement or commitment binding on manufacturer must be in writing and signed by Brian Shea or Dan Shea. Gulf Stream Coach reserves the right to change pricing or specifications without notice. Correspondence #4385 -MW

RV Ready
Amendment

A 15 mile radius into LA & Orange County from Upland location. With no new dealer between RV Ready Upland location and Metro RV.

Reason:

Upland Location is located .2 miles from LA county line.

847 E. VALLEY BLVD. COLTON, CA, 92324
IS RV READY'S SECOND LOCATION IN
SAN BERNARDINO COUNTY.