

Sacramento, California 95814  
Telephone: (916) 445-1888

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of )  
NOWLING'S OLDSMOBILE, INC.; ) Protest Nos. PR-227-79  
HARRIS OLDSMOBILE, INC.; and ) PR-228-79  
HANSEL OLDSMOBILE, INC., ) PR-229-79  
Protestants, )  
vs. )  
OLDSMOBILE DIVISION OF )  
GENERAL MOTORS CORPORATION, )  
Respondent. )

---

DECISION

The attached Proposed Decision of the Hearing Officer 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 29th day of June, 1979.

  
FLORENCE S. POST  
President  
New Motor Vehicle Board

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of )  
 )  
NOWLING'S OLDSMOBILE, INC.; ) Protest Nos. PR-227-79  
 )  
HARRIS OLDSMOBILE, INC.; and ) PR-228-79  
 )  
HANSEL OLDSMOBILE, INC., ) PR-229-79  
 )  
 ) Protestants, )  
 )  
vs. )  
 )  
 )  
OLDSMOBILE DIVISION OF )  
GENERAL MOTORS CORPORATION, )  
 )  
 ) Respondent. )  
 )  
\_\_\_\_\_ )

PROPOSED DECISION

Procedural Background

1. On February 23, 1979, pursuant to section 3062 of the Vehicle Code, <sup>1/</sup> Oldsmobile Division of General Motors Corporation (Oldsmobile) gave notice of its intention to approve the relocation of the existing dealership of Dick Browning Oldsmobile, Inc. (Browning), presently located in the central part of Long Beach at 1227 Long Beach Boulevard, to an auto mall, located in Cerritos. Such relocation had previously been requested of Oldsmobile by Browning.

1. Unless otherwise indicated, all references are to the California Vehicle Code.

2. Protests opposing such relocation were filed on March 8, 1979 by three protestants:

Nowling's Oldsmobile, Inc. (Nowling)  
7440 East Firestone Boulevard  
Downey, California

Hansel Oldsmobile, Inc. (Hansel)  
1325 West Commonwealth Avenue  
Fullerton, California

Harris Oldsmobile, Inc. (Harris)  
13617 West Whittier Boulevard  
Whittier, California

3. The three protests were consolidated for hearing. These protests are related to, but were not consolidated with, the protest of Browning (PR-230-79) against the relocation of Henshaw Oldsmobile, Inc. (Henshaw) from South Gate to an auto mall in Compton.

4. If the proposed relocation of Browning to Cerritos were approved, Browning has agreed to withdraw its protest with respect to the relocation of Henshaw.

5. Hearing in these consolidated dockets was held, pursuant to section 3066, before Hearing Officer, Aaron S. Resnik, in Laguna Niguel, commencing on April 16, 1979, and concluding on April 21, 1979. The protestants were represented by James G. Lewis, 1880 Century Park East, Suite 1400, Los Angeles. Respondent was represented by James C. Cubbin, of the legal staff of General Motors Corporation, Detroit, Michigan.

## Issues Presented

6. Pursuant to section 3066, the protestants ". . . have the burden of proof to establish there is good cause not to enter into a franchise. . ." to relocate a motor vehicle dealership.

7. Each of the protestants makes identical contentions:<sup>2/</sup>

(a) The value of each of the existing franchises and the permanent investment of each will be impaired (section 3063(1));

(b) There is adequate competition already existing in the relevant marketing area (section 3063(2) and (4));

(c) Because of the potential dilution of sales and service work, occasioned by the relocation, each of the protestants may have to raise its service prices to the disadvantage of the consuming public (section 3063(2));

(d) Relocation of Browning from Long Beach to Cerritos will cause a large geographic and population area to be left without an Oldsmobile facility for sales and service (section 3063(2));

(e) Leaving Long Beach, one of the larger California cities, without an Oldsmobile franchise may require the vacated point to be reopened in the near future with the establishment of a new dealership, thereby further increasing competition and otherwise impairing the financial stability of the protestants

---

2. In its protest in Docket No. 230-79, Browning voices similar concern regarding the relocation of Henshaw to the Compton Auto Mall. Among other things, it alleges that the move three miles closer to the present Browning location, a five minute drive, would have a negative effect on the retail motor business, would result in price cutting, loss of business, and a poorer quality of service to the consuming public. (Exh. V.)

and their ability to serve the consuming public adequately and well (section 3063(3));

(f) Each of the protestants, singly and among themselves, is providing adequate sales, service and parts facilities to the consuming public, and a strong degree of competition prevails, all in the public interest (section 3063(4)).

### Findings of Fact

#### Facts Relating to Permanency of Investment

8. Each of the protestants has a substantial permanent investment in its present location and has plans for improvements, additions, and upgrading as available funds and consumer demand permit and requires.

9. Browning has no investment in the proposed Cerritos location, except that it has paid for an option on the necessary acreage. If the relocation is approved, Browning is prepared to erect a new facility, costing more than one and one-half million dollars.

10. Browning's present location is in a deteriorating area of Long Beach; the municipal authorities have cited the owners (Browning is a lessee) for numerous violations, corrections of which would make it more feasible to demolish and rebuild.

Facts Relating to Effect on  
Retail Motor Vehicle Business

11. The relocation of Browning from downtown Long Beach to Cerritos is a move of approximately 7-1/2 to 8 miles. The proposed new location is 6-1/2 miles from Nowling; 8 miles from Harris; and approximately 9 miles from Hansel. (These are air-line mileages.)

12. The proposed location is considered an excellent point for the establishment of a motor vehicle dealership. It is the junction of two important freeways (605 and 91); close to large, modern shopping facilities, and otherwise an attractive area for the consuming public.

13. The proposed location is less than one mile outside the city limits of Long Beach.

14. To some of the Long Beach consuming public, particularly in the northern area, where the population is moving, the proposed location would be equally or more convenient than the present location of Browning.

15. With regard to the consuming public who work in downtown Long Beach and who seek to have their cars serviced close to their places of work, the relocation of Browning would leave them with no service facility nearby. The number of such customers or potential customers is relatively small, and Browning, if relocated, has agreed to establish necessary pick-up and delivery service to meet this need. Further-

more, Browning would advertise heavily in the Long Beach area and utilize direct mailings and make other efforts to preserve and increase its sales and service.

16. The relocation of Henshaw to Compton would place that dealership less than seven miles from the present location of Browning and could be utilized by owners of Oldsmobile who live or work near the present Browning location as an additional source of sales and service.

17. The relocation of Browning would leave Oldsmobile unrepresented in one of California's largest cities; such lack of representation could lead to a loss of sales to competing lines. Some of the protestants advertise and sell in the Long Beach area.

18. At the time that Oldsmobile was approached by Browning and Henshaw with respect to their proposed relocations, it undertook and completed a comprehensive marketing survey, designated by Oldsmobile as "Area of Geographic Sales and Service Advantage" (AGSSA). Hundreds of hours were consumed in making the study, which was undertaken for the purpose of determining the impact of the two relocations, not only on the dealers seeking to relocate, but on other affected dealers, including the protestants herein, and the consuming public. The material conclusions drawn and recommendations made were as follows:

(a) An open point at Lakewood (Long Beach) be discontinued.

(b) The migration of Henshaw to the Compton auto mall be approved.

(c) The migration of Browning to the Cerritos auto mall be approved.

It was further concluded that:

(a) The present number of dealers (6) can adequately service the market place, thus supporting the aforementioned conclusion that the Lakewood open point could be discontinued.

(b) A review of the financial results of the protestants, as well as other dealers in the areas covered by the migrations, indicates that "outstanding profits being attained by these dealers" and "the relocations recommended" will not adversely affect these dealers' profit opportunities.

19. The new car sales of the three protestants from 1974 to 1978, inclusive, are as follows:

|      | <u>NOWLING</u> | <u>HARRIS</u> | <u>HANSEL</u> |
|------|----------------|---------------|---------------|
| 1974 | 296            | 319           | 404           |
| 1975 | 381            | 417           | 477           |
| 1976 | 529            | 627           | 775           |
| 1977 | 858            | 1,073         | 1,118         |
| 1978 | 1,295          | 1,288         | 1,443         |

20. Of the 1978 sales by each of the protestants, Nowling had 65 registered in the Cerritos area, Harris 7, and Hansel 22. Total Oldsmobile sales were 210. The protestants accounted for less than 45% of such sales.

21. Browning's total retail sales in 1978 were 1263; 90 of these vehicles were registered in the immediate Cerritos area. The bulk of its sales were in the northern Long Beach and Cerritos-

Artesia areas, which areas are closer to and more convenient to its proposed location than to its present location.

22. The protestant who would be most acutely affected by the relocation is Nowling. Its penetration of the Cerritos area is the greatest among the protestants. However, Nowling's penetration of its primary sales area is low, indicating that there is sales potential in its own vicinity.

23. In the Los Angeles-South marketing area, as defined by Oldsmobile and based on census tracts, and which encompasses the relevant marketing area surrounding the Cerritos auto mall, Oldsmobile's penetration of the market was 5.6%, while its total U.S. penetration was 8.8%.

Facts Relating to the Impact on the Public  
Welfare Due to Establishment of an  
Additional Franchise.

24. For practical business and legal reasons, Oldsmobile was not able to give assurances that Long Beach would no longer be considered as a viable area for a dealership.

25. There is, however, little, if any, likelihood that Oldsmobile would re-establish a franchise in Long Beach, within the next two years.

Facts Relating to Adequacy of Competition  
and Convenient Consumer Care

26. All of the protestants are providing adequate service at competitive prices as well as fulfilling warranty obligations.

27. The facilities of Harris and Hansel meet or exceed Oldsmobile guidelines.

28. The facilities of Nowling do not meet all of Oldsmobile's criteria. Its deficiencies were in display facilities and service stalls. However, in 1978 it was able to handle over 13,470 repair and warranty orders without undue difficulty.

29. Browning's present facilities are poorly located and could be a factor in the operation of its service and parts department, the latter being a losing operation.

30. In its relevant marketing area, Browning has achieved 78% sales penetration.

31. In the past two years, and particularly in 1978, sales of Oldsmobiles in the Southern Los Angeles County and Northern Orange County areas were limited by available supply of certain types of vehicles.

32. The recent gasoline crisis and its economic consequences could have less impact on Oldsmobile dealers than some others because of the availability of diesel engines and the new "X" body cars.

33. Dealer allocations by Oldsmobile are predicated on an historic sales performance. The extent that any of the protestants lose sales as a result of the Browning relocation, their supply of product might be adversely affected. However, under Oldsmobile's "responsive distribution system",<sup>3/</sup> as adjusted by

---

3. Oldsmobile's distribution system is geared to dealer sales performance and total sales in a particular zone. To the extent that demand in one area of the county is heavy and in another, light, shifting of product can be made.

regional and zone management, no adverse affect would be experienced by the protestants insofar as availability of product is concerned.

Facts Relating to Increased Competition

34. Although no new franchise is presently contemplated, even if one were to be established, it would serve only to increase competition.

35. The return on investment in 1978 to Browning and the three protestants is as follows:

|          |      |
|----------|------|
| Browning | 122% |
| Hansel   | 59%  |
| Harris   | 82%  |
| Nowling  | 80%  |

"Big City"<sup>4/</sup> Oldsmobile dealers nationally achieved a 38% return on investment.

36. The gross profits per unit for the protestants and Browning in 1978 are as follows:

|          |        |
|----------|--------|
| Browning | \$ 891 |
| Hansel   | 821    |
| Harris   | 895    |
| Nowling  | 826    |

"Big City" Oldsmobile dealers average gross profit per unit in 1978 was \$631.00.

Determination of Issues

1. Protestants have failed to sustain their burden of proof.

---

4. Although it is not defined precisely in the record, "Big City" covers large metropolitan areas such as the Los Angeles-Orange County area, in which all 9 of these dealers are located. (RT 1077.)

2. Protestants have failed to establish that good cause exists for not relocating the Browning franchise from Long Beach to Cerritos, for the following reasons:

(a) Protestants failed to show that the relocation of Browning would jeopardize the permanent investments of the protestants.

(b) Protestants failed to show that the relocation of Browning will have a detrimental effect on the retail motor vehicle business and the consuming public in the relevant marketing area.

(c) There is latent demand for Oldsmobile vehicles in the relevant marketing area, and each of the protestants and Browning in its proposed relocation can gain greater penetration in the area than heretofore achieved.

(d) To the extent that protestants may lose sales to Browning by virtue of the proposed relocation, such possible loss of sales is no grounds for disapproving the relocation.

(e) The relocation of Browning may well lead to an increase in demand for Oldsmobile products and service, in which increase all protestants can share.

(f) The relocation of Browning will increase competition, not only in the Cerritos area, but also in the Long Beach area. The relocation of Henshaw would also serve to increase competition in Long Beach and therefore both moves will be in the public interest.

(g) To the extent that the downtown area of Long Beach is left without an Oldsmobile dealership, thereby impairing the

availability of service in that area, any undesirable consequences are assuaged by the relocation of Henshaw and by Browning's assurances of seeking to maintain itself as a viable force in Long Beach.

(h) The relocation of Browning will be in the public interest.

\* \* \* \* \*

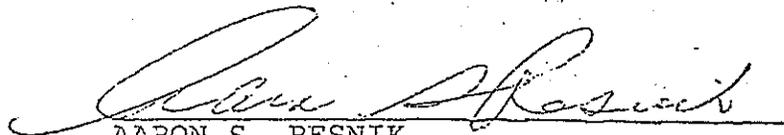
The following proposed decision is respectfully submitted:

The protests are overruled. The respondent is entitled to relocate Browning to the proposed location.

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 dates at San Diego, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated:

*June 22, 1979*



AARON S. RESNIK  
Hearing Officer  
New Motor Vehicle Board

1401 - 21st Street, Suite 407  
Sacramento, California 95814  
Telephone: (916) 445-1888

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
MARQUIS MOTORS, INC., ) Protest No. PR-234-79  
Protestant, )  
vs. )  
TOYOTA MOTORS DISTRIBUTORS, INC., )  
Respondent. )

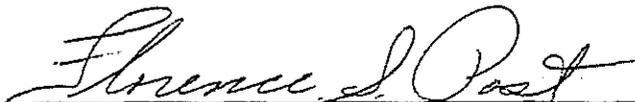
---

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 22 day of January, 1980.

  
FLORENCE S. POST  
President  
New Motor Vehicle Board