



New Motor Vehicle Board

In-Site

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GENERAL BOARD MEETING

The New Motor Vehicle Board (“Board”) held a General meeting on May 22, 2012, in Los Angeles, California. At that meeting, the members considered several case management matters as well as administrative matters.

Case Management

Laidlaw’s Harley-Davidson Sales, Inc. dba Laidlaw’s Harley-Davidson v. Harley-Davidson Motor Company
Protest No. PR-2299-11

Harley-Davidson sought to terminate Laidlaw’s franchise because, over a two-year period, it alleged that Laidlaw’s sold 42 new motorcycles, and improperly sourced 17 new pleasure vehicles in violation of Respondent’s Non-Retail Sales Policy. Respondent further contends that Protestant’s failure to perform Pre-Delivery Inspection and Protestant’s filing of inaccurate or incorrect Sales Warranty Registration information were violations of the franchise as set forth in Respondent’s General Conditions of Sales and Service.

A merits hearing was held before Administrative Law Judge Marilyn Wong November 30 through December 14, 2011. The proposed decision sustaining the protest was unanimously adopted by the Public Members except that it was conditionally sustained as follows:

1. Protestant shall continue with a program of obtaining training for compliance with Respondent’s Non-Retail Sales Policy (“NRSP”) and Fleet Sales Policy (“FSP”) for an additional three years from the date of this decision (through May 24, 2015). These training and compliance services shall be performed on a regular basis and may be provided by the current vendor (“Vendor”) or other similar third-party provider of such services.

2. Protestant shall ensure that Vendor provides Protestant a training and compliance report (“Report”) within a reasonable time after each training session and compliance review.

3. Protestant shall provide Respondent with a copy of the Report within 10 business days of receipt thereof from

Vendor. The Report shall be sent by Protestant to Respondent via Certified Mail, Return Receipt Requested, and e-mail. Within 10 business days of receipt of this Decision, counsel for the parties shall stipulate as to the identity and address of the agent of Respondent to whom the reports shall be directed.

4. Any recurring violations of the NRSP or the FSP as shown in the Reports may be subject to the sanctions provided for if warranted in accordance with Respondent’s policies. However, any future decision of Respondent to terminate the franchise of Protestant is subject to the provisions of the Vehicle Code.

5. Respondent shall provide Protestant with an accounting of any internal and external audit and legal expenses associated with the audit. However, “legal expenses associated with the audit” does not include legal expenses associated with the termination proceedings before the Board. Within 30 days of receipt of this accounting, Protestant shall fully reimburse Respondent.

Depot Garage, Inc. v. General Motors
Protest No. PR-2315-11

Depot Garage filed a Vehicle Code section 3060 termination protest. This protest was resolved and the parties’ consummated a buy-sell agreement but Protestant never filed a request for dismissal. Respondent filed a motion to dismiss for lack of jurisdiction. A telephonic hearing was held on April 24, 2012, before Administrative Law Judge Anthony M. Skrocki. The Proposed Order dismissing the protest for lack of jurisdiction was unanimously adopted by the Public Members.

Amicus Curiae Request

In Powerhouse Motorsports Group, Inc. v. Yamaha Motor Corporation, U.S.A., Yamaha requested

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ALJ ROUNDTABLE

The Board held a half-day Administrative Law Judge (ALJ) Roundtable on May 24, 2012. William Brennan, Executive Director and Robin Parker, Senior Staff Counsel welcomed the ALJs. Dana Winterrowd, Staff Counsel, participated telephonically.

ALJ Anthony Skrocki led the discussion on the following topics:

Vehicle Code section 3060 and 3070 modification protests: A franchisor is precluded from modifying or replacing a franchise without complying with Section 3060(b)(1) or 3070(b)(1) only "...if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment...". The burden of proof was also addressed.

Injunctions or automatic stays in termination/modification or establishment/relocation protests: The "automatic stay" under the Board's statutes was created by the legislature. It is not a "stay" or "injunction" that is within the discretion of a private citizen/person that is created only when a protest is filed. (See *Orrin W. Fox* case (439 U.S. 96, 104-109))

What are the "existing circumstances" or other factors to be considered along with the statutorily enumerated

good cause factor (Veh. Code §§ 3061/3071 and 3063/3073).

ALJ Diana Woodward Hagle discussed **issuing protective orders in Board hearings**. (13 CCR § 551.20; Gov. Code § 11425.20; and Rule 2.550 and 2.551 of the California Rules of Court)

The Roundtable was well-received by the ALJs and will be held annually.



UPCOMING NAMVBC EVENT

NATIONAL ASSOCIATION OF MOTOR
VEHICLE BOARDS AND COMMISSIONS

Alexandria, VA

Fall Meeting

September 19-22, 2012

Contact Kathy Tomono at (916) 323-7203

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that the Board file an amicus curiae brief in support of its arguments regarding the jurisdiction of the Board in its appeal before the Second Appellate District. The Board filed an amicus letter last year with the California Supreme Court in the *Powerhouse* case. The letter was filed prior to the jury trial in which Robin Parker, Senior Staff Counsel, testified by providing statistical information on case management, explained the difference between a protest and a petition, and answered questions. Yamaha now requests that the Board submit an amicus curiae brief that would be the same as the letter submitted to the Supreme Court. According to Yamaha's counsel, "...the brief would explain the difference in the Board's jurisdiction between protests and petitions and would set forth the difficulties that would occur if the Board were held to lack jurisdiction over protests. The brief also would request the appellate court to recognize that rulings of the Board, in making its jurisdictional determination on a termination protest, are entitled to deference in the courts of this state." Lastly, counsel indicates that Yamaha does not request the Board take a position with regard to the ultimate outcome of the case; the proposed brief is meant to educate the court.

Dennis Law, Esq. of Andre, Morris & Buttery on behalf of Powerhouse Motorsport and Tim Pilg presented public comments. Mr. Law questioned why the Board would want to get involved in what is clearly a matter between two civil litigants.

After a lengthy discussion, the Board unanimously denied Yamaha's request.

Administrative Matters

The Board's out-of-state travel for the next fiscal year was denied by the Governor because the trips were not "mission-critical." The allocated funds for these trips were about \$15,000, thereby resulting in a savings.

The Vision Statement was revised as follows to reflect that by reducing the need for costly litigation, the Board reduces the burden on taxpayers:

"Safeguard for the Board's constituency, a fair, expeditious, and efficient forum for resolving new motor vehicle industry disputes, which ultimately improves industry relations and reduces the need for costly litigation, and thereby further reducing the burden on California taxpayers. Assist consumers in mediating concerns with dealers, manufacturers, and distributors licensed by the California Department of Motor Vehicles.

Develop methods that further improve the delivery of Board services in a timely and cost-effective manner. Educate Board members concerning industry matters, which

further improve the Board's ability to equitably resolve industry disputes."

The Solon C. Soteras Employee Recognition Award was unanimously awarded to Mediator, Kathy Tomono.

The annual discussion and consideration of the methods of determining Board fees was reviewed; the fees are not a tax.

Through the third quarter of fiscal year 2011-2012, the Board expended 66% of its appropriated budget and expended only 68% of its budget for operating expenses. The Board is still operating at the same expenditure level as it has for the past several years even though the fees collected have been significantly reduced.

The Board's collection of the Arbitration Certification Programs' ("ACP") annual fee was completed with 100% compliance. ACP requested that the Board collect \$1,106,000 to fund its program. This figure was divided by 1.1 million vehicles distributed in 2010 that were under the ACP's jurisdiction; \$5,000 is added in to cover the Board's costs for administering the collection. This resulted in a fee of \$.989 per vehicle.

After the March 21, 2012, Industry Roundtable, the surveys were reviewed and the event was deemed a success. It was well-received and the topics were informative and provided useful information that was of interest to the attendees. There were a total of 86 attendees. The Roundtable was held at the new facility at DMV Headquarters and the Board will likely use that facility again next year.

Bill Brennan, Executive Director, reported on the status of the Board's Sunset Review Committee hearing and the upcoming June 7 hearing that was subsequently postponed. It was reported that Linda Lighter, an Associate Government Program Analyst, is retiring at the end of June after 22 years of phenomenal service with the Board. The Board is still looking for Linda's replacement.

The following meetings were tentatively scheduled for the second half of 2012: July 16, 2012, Special Meeting in Los Angeles; August 23, 2012, General Meeting in Riverside; and December 12, 2012, General Meeting,



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