New Motor Vehicle Board

In-Site

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DMV DIRECTOR GEORGE VALVERDE RETIRES

George Valverde is retiring from the Department of Motor Vehicles (DMV), after 36 years of public service, the past six and a half years as the Director. In that time, he transformed DMV into a recognized leader in public service that embraced innovation and technology as the hallmark of customer service.

Successes achieved during his tenure include, completing many IT projects, launching a new Leadership in Energy and Environmental Design (LEED) certified field office, opening 28 new field offices in areas previously underserved, and being recognized for community services with his commitment to charitable campaigns statewide. George was particularly pleased with how employees rose to the assistance of others during local disasters, and how they supported each other during times of need. He directly attributes this to the ongoing diligence of so many DMV employees who work very hard to meet the demands of the public.

Mr. Valverde has had a very good relationship with the New Motor Vehicle Board (Board), having attended several Board meetings and speaking at the 2012 Roundtable which was held in DMV's Assembly Room. He will be especially missed at the Holiday breakfast, where he and the Board's Executive Director, Bill Brennan, and other honored guests have greeted DMV and Board staff for a number of years.

Mr. Valverde's effective retirement date is October 30, 2012.

SPECIAL BOARD MEETING July 16, 2012

The New Motor Vehicle Board ("Board") held a Special meeting on July 16, 2012, in Los Angeles, California. At that meeting, the Public Members considered one case management matter.

Santa Monica Auto Group, dba Santa Monica Infiniti v. Infiniti West, a Division of Nissan North America, Inc.

Protest No. PR-2330-12

Santa Monica Infiniti filed a Vehicle Code section 3062 establishment protest. Infiniti filed a motion to dismiss alleging the parties signed a waiver agreement on the same date as the dealer agreement, and Protestant waived its right to file a protest against the establishment of an Infiniti dealer in the Beverly Hills Open Point. A telephonic hearing was held on June 6, 2012, before Administrative Law Judge Lonnie M. Carlson. The Proposed Order granting Respondent's motion to dismiss was unanimously adopted by the Public Members.

GENERAL BOARD MEETING August 22, 2012

The Board held a General meeting on August 22, 2012, in Riverside, California. At that meeting, the members considered several case management matters as well as a few administrative matters.

Riverside Motorcycle, Inc. dba Skip Fordyce Harley-Davidson v. Harley-Davidson Motor Company, a Corporation

Protest No. PR-2310-11

Harley-Davidson sought to terminate Skip Fordyce's Harley-Davidson franchise because it alleged that over a 13-month period, Skip Fordyce sold 29 new motorcycles in violation of Respondent's Non-Retail Sales Policy ("NRSP") for Pleasure Vehicles. Respondent further contends that Protestant's failure to perform Pre-Delivery Inspections and the filing of false Sales Warranty Registration information are violations of the franchise as set forth in Respondent's General Conditions of Sales and Service.

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A merits hearing was held before Administrative Law Judge Victor D. Ryerson on March 5-8, March 12-16 and March 19, 2012. The Proposed Decision, adopted by a three-to-one vote, conditionally sustained the protest as follows:

"Respondent has not met its burden of proof under Vehicle Code Section 3066(b) to establish that there is good cause to terminate Riverside's Harley-Davidson Co. franchise, but in order to assure performance of binding contractual agreements between franchisees and franchisors or otherwise serve the purposes of Article 4 of Division 2 of Chapter 6 of the Vehicle Code, Protestant shall fully reimburse Respondent for '…any internal and external audit and legal expenses,' as provided for in the NRSP, that are associated with the audit upon which the Notice of Termination is based. For purposes of this condition, the term, 'legal expenses associated with the audit' in the NRSP does not include attorney's fees, legal costs, or other legal expenses associated with the termination proceedings before the Board. Respondent shall promptly provide Protestant with an accounting of its 'audit and legal expenses.' Within 30 days of receipt of this accounting, Protestant shall fully reimburse Respondent."

West Covina Motors, Inc. dba Clippinger Chevrolet v. General Motors, LLC

Protest No. PR-2213-10

This case involves a dispute pertaining to a Board adopted Stipulated Decision and Order. Vehicle Code section 3050.7(a) provides that the Board may adopt stipulated decisions and orders without a hearing pursuant to Section 3066, to resolve one or more issues raised by a protest filed with the Board. On December 15, 2010, pursuant to Section 3050.7(a), the Board issued its "Order Adopting [Proposed] Confidential Stipulated Decision of the Board Resolving Protest".

The settlement agreement negotiated by the parties was confidential and resulted in the resolution of the protest. Subsequently, a dispute arose between the parties concerning compliance with the terms of the parties' confidential settlement agreement. The dispute concerned Protestant's loss of flooring on December 1, 2011. Section 2.3 of the Settlement Agreement provides that:

"If at any time before November 30, 2012, [Protestant] loses its Dedicated Chevrolet Flooring or its total amount decreases below $3 million, [Protestant] shall have [90] days to either (a) provide written evidence of a commitment for replacement of Dedicated Chevrolet Flooring…or (b)

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Photo unavailable at this time

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present GM with a fully-executed 'buy-sell' agreement... If [Protestant] does not satisfy either of these conditions (a) or (b) within [90] days of the date it loses its…Flooring…[Protestant] agrees that its Dealer Agreement will terminate voluntarily effective 30 days later…"

An evidentiary hearing was held before Administrative Law Judge Lonnie M. Carlson on May 17, 2012, in Sacramento.

The Proposed Decision was unanimously adopted by the Public Members. It provided that "Protestant's franchise shall continue in existence pending the timely occurrence of one of the two alternatives available to it, that are: (1) Obtaining floor-plan financing as required by the Settlement Agreement; or, (2) The submission by Protestant to GM of the complete buy-sell package as required by the Settlement Agreement. If neither of these alternatives occurs, Protestant's franchise shall terminate on the 81st day after the date of mailing to the parties and their counsel by U.S. Postal Service Certified Mail a copy of the Board's Order adopting this Proposed Decision."

Proposed Board Member education for 2013 was discussed. It includes asking representatives from CalRVDA and the Recreation Vehicle Industry Association to attend the January or February meeting to discuss the legislative irregularities with Article 5 of the Vehicle Code pertaining to RV protests. Additionally, NADA is set for February 8-11, 2013, in Orlando, Florida, and the CNCDA Dealer Day is set for March 13, 2013.

The Board's budget of $1.607 million for fiscal year 2012-2013 was adopted.

SPECIAL BOARD MEETING August 23, 2012

The Board held a Special meeting on August 23, 2012, in Riverside, California. At that meeting, the Public and Dealer Members considered Yamaha's renewed request that the Board file an amicus curiae brief. It also considered six Proposed Decisions and one Proposed Order in *McMahon's RV v. Roadtrek Motorhomes*. The Board set a record for having an 11 hour Board meeting!

Amicus Curiae Request

In ***Powerhouse Motorsports Group, Inc. v. Yamaha Motor Corporation, U.S.A.,*** Yamaha renewed its request 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.

At the May 22, 2012, General Meeting, the initial request was considered and denied by the Public and Dealer Members of the Board. The Board indicated that Yamaha could present additional information to support its request.

On August 3, 2012, the Board received Yamaha's renewed request. Yamaha maintains that the amicus curiae brief would "…educate the Court of Appeal on the issue of the Board's jurisdiction to hear and decide protests, especially termination and establishment protests." It believes that refusal to file the amicus curiae brief could have "catastrophic results" in that if the Court of Appeal fails to reverse the trial court's decision it "…will very likely adversely impact or eliminate the jurisdiction of this Board." According to counsel, Yamaha's primary argument on appeal is that the case should not have gone to the jury and it was entitled to a summary judgment in its favor. Yamaha contends that the underlying facts were never in dispute: Powerhouse closed its doors; Powerhouse was in the process of a buy-sell; Yamaha issued a notice of termination; Powerhouse failed to file a timely protest; and Powerhouse's franchise was terminated by operation of law. Yamaha does not request that the Board take a position with regard to the ultimate outcome of the case or anything that happened during the jury trial.

On August 13, 2012, Powerhouse and Jerry Namba, successor in interest to Timothy L. Pilg and Chapter 7 Bankruptcy Trustee, filed an opposition to Yamaha's Request. Powerhouse indicated that its responsive brief in the appeal "…does not contend, argue or suggest that this Board lacks jurisdiction to hear protests. Powerhouse's claims are based on Yamaha's violation of section 11713.3 and related common law tort theories…" which the superior court has

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jurisdiction to address. Accordingly, it argued that the Board's protest jurisdiction is not an issue. Powerhouse maintains that "this matter is between it and Yamaha. An amicus brief will alter the balance of the playing field, and it is unnecessary…"

Maurice Sanchez, Esq. of Baker & Hostetler LLP on behalf of Yamaha presented public comments. Dennis D. Law, Esq. of Andre, Morris & Buttery on behalf of Powerhouse Motorsports Group, Inc. ("Powerhouse) and Tim Pilg presented public comments.

After a lengthy discussion, Yamaha's renewed request that the Board file an amicus curiae brief was denied by a seven-to-one vote.

Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.

A total of 18 protests involving McMahon's RV and Roadtrek Motorhomes were filed with the Board in 2010. Protestant alleged Roadtrek violated numerous Vehicle Code provisions including those pertaining to termination, modification, establishment, warranty reimbursement and franchisor inventive program reimbursement. By the first day of the hearing in August 2011, 12 protests had been consolidated for hearing and six protests had been dismissed.

Administrative Law Judge Diana Woodward Hagle presided over a 35 day in-person hearing which concluded on February 1, 2012. In March, Protestant requested dismissal of its modification protest pertaining to its Scotts Valley dealership (PR-2198-10). A one-day telephonic hearing was held on April 26 after McMahon's RV relocated its Irvine dealership to Westminster.

Michael J. Flanagan, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. John A. Belcher, Esq. of the Law Offices of John A. Belcher represented Protestant for purposes of presenting oral comments on the termination Proposed Decision. Louis S. Chronowski, Esq., of Seyfarth Shaw LLP represented Respondent. After lengthy oral comments by counsel for the parties, the Board issued the following decisions:

Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.

Protest No. PR-2199-10 (Veh. Code § 3070 Modification)

The Proposed Decision was unanimously rejected by the Board. The Board indicated that the modification protest for Colton was sustained. Roadtrek has not met its burden of proof and violated Vehicle Code section 3070(b)(1).

Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.

Protest No. PR-2201-10 (Veh. Code § 3070 Modification)

The Proposed Decision was unanimously rejected by the Board. The modification protest for Irvine was sustained up until the time it relocated to Westminster. Roadtrek has not met its burden of proof and violated Vehicle Code section 3070(b)(1).

Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.

Protest Nos. PR-2206-10, PR-2208-10, and PR-2209-10 (Veh. Code § 3075 Warranty Reimbursement Claims)

The Proposed Decision sustaining the protests was unanimously adopted.

Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.

Protest Nos. PR-2205-10, PR-2211-10, and PR-2212-10 (Veh. Code § 3076 Franchisor Incentive Program Claims)

The Proposed Decision sustaining the protests was unanimously adopted.

Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.

Protest No. PR-2233-10 (Veh. Code § 3072 Establishment)

The Proposed Decision sustaining the protest was unanimously adopted.

Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.

Protest Nos. PR-2244-10 and PR-2245-10 (Veh. Code § 3070 Termination)

The Proposed Decision overruling the protest was adopted by a six-to-two vote.

Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.

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Protest Nos. PR-2244-10 and PR-2245-10 (Veh. Code § 3070 Termination)

About two weeks prior to completion of the merits hearing, Respondent filed a motion to dismiss the Scotts Valley Protests. A telephonic hearing was held on February 17, 2012, before Administrative Law Judge Anthony M. Skrocki. On March 13, 2012, ALJ Skrocki also issued an "Order Deferring Proposed Order Granting Respondent's Motion to Dismiss Protest No. PR-2245-10 (Scotts Valley) Re; Termination." Although it would ultimately be recommended in a Proposed Order that the Board grant the Motion to Dismiss as it relates to the termination of the franchise for Mega's Scotts Valley dealership, it is determined that it would be appropriate to defer such Proposed Order until the Board has before it the findings of fact and proposed decisions as to all of the other consolidated protests. This Proposed Order to dismiss the Scotts Valley termination protest was adopted by a six-to-two vote.

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SPECIAL BOARD MEETING October 17, 2012

The Board held a Special meeting on October 17, 2012, in Los Angeles, California. At that meeting, the Public Members and Dealer Members considered two case management matters.

Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.

In Protest No. PR-2199-10 Mega RV alleged that Roadtrek violated Section 3070(b) by failing to give the required notices of Roadtrek's intent to modify Mega RV's Colton, California franchise by establishing another franchisee, Mike Thompson's Recreational Vehicles, dba Mike Thompsons RV Superstores ("MTRV"), in the "exclusive sales area" Roadtrek had previously assigned to Mega RV (i.e., within a 60-mile radius of the dealership). MTRV's Colton dealership is directly across the street from Mega RV's dealership.

The facts in Protest No. PR-2201-10 are similar to those above except that Mega RV alleged that Roadtrek violated Section 3070(b) by failing to give the required notices of Roadtrek's intent to modify Mega RV's Irvine, California franchise by establishing MTRV dealership locations in Santa Fe Springs, Fountain Valley (two locations), and Colton, in the "exclusive sales area" Roadtrek had previously assigned to Mega RV.

Administrative Law Judge Woodward Hagle's Proposed Decision overruling the protest was considered by the Board at its Special Meeting of August 23, 2012. Pursuant to Government Code section 11517(c)(2)(E), the Board, acting by and through its Public Members and Dealer Members, rejected the Proposed Decision and instead ordered that the protest be sustained and that Roadtrek violated Vehicle Code section 3070(b)(1). A formal Board order memorializing the sustaining of the protest was to be written by staff along with Public Member Glenn Stevens. The orders confirming the decision to sustain the protests were considered by the Public Members and Dealer Members of the Board at the October Special Meeting.

Michael J. Flanagan, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. Louis S. Chronowski, Esq., of Seyfarth Shaw LLP represented Respondent. After lengthy oral arguments by counsel for the parties, the Board issued the following decisions:

Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.

Protest No. PR-2199-10 (Veh. Code § 3070 Modification)

The Order Confirming Decision to Sustain the Protest was unanimously adopted.

Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.

Protest No. PR-2201-10 (Veh. Code § 3070 Modification)

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NAMVBC 2012 FALL WORKSHOP

The National Association of Motor Vehicle Boards and Commissions ("NAMVBC") held its Fall Workshop in Alexandria, VA September 19-22, 2012. Various industry associations and Government regulators were present for the three day event, with several keynote speakers discussing industry issues. A packed agenda with the theme "Present State of the Industry" provided valuable information and ideas of common interest to all.

A welcome reception was held on Wednesday evening at the offices of Arent Fox in Washington, DC with special guest speakers, former U.S. Senators Byron L. Dorgan and Robert Bennett and former U.S. Congressman Philip English.

Thursday morning began with a welcome by Gerard Murphy, President of Washington Area New Automobile Dealers Association and was immediately followed by a panel discussion on Vehicle Automation and Autonomous Vehicles. The panel included Ronald Medford, Deputy Administrator, National Highway Traffic Safety Administration, and Jackie Glassman, Attorney at Hogan Lovells LLC. Several states, including California have passed laws allowing for these vehicles to be operated and tested on roads and highways. It's the real deal.

Paul D. Ryan, Director Government Affairs, Global Automakers Association spoke on the topic of International Trade Agreements.

After lunch, a discussion was held on the subject of International Dealerships. Aaron J. Jacoby, Arent Fox LLP, and Mack McLarty, President of MLJ McLarty-Landers (and former Chief of Staff for President Clinton) provided keen insight in doing business and franchise laws and practices in emerging countries.

The final topic for the day was Interstate Abuse of Indiana Dealer License: Auctions as Unwitting Facilitators for Curbstoning. In a panel which included Greg Kirkpatrick, Executive Director, Arkansas Motor Vehicle Commission as moderator, and panelists Michelle Mallon, Vice President of Legal, ADESA, Carol A. Mihalik, Associate General Counsel, Indiana Secretary of State, Charlie Adams, AutoTec LLC and Berta Phelps, Vice President of Strategic Operations, Manheim Auctions.

Friday was packed with several topics. The morning began with the subject of Dealer Compensation in Auto Financing FTC Advertising Consent Decree. This was a panel discussion with Andrew Koblenz, NADA Vice-President and General Counsel. and Paul Metrey, NADA Chief Regulatory Counsel, Financial Services, Privacy and Tax. This was a very valuable session for state regulators.

Next was the topic of Vehicle Connectivity: Current Capabilities and Future Issues with speaker Frank Weith, GM Connected Services, Volkswagen Group of America, Inc. Mr. Weith provided a vivid picture of the vehicle of the future, particularly in light of the previous day's discussion of the autonomous vehicle.

Following lunch was a discussion on Virginia Independent Dealer Recertification Program with Prin Cowan and Ann Majors, Virginia Motor Vehicle Dealer Board.

David Sparks, National Highway Traffic Safety Administration Director, Office of Odometer Fraud Investigation, spoke on Odometer Rollback and Airbag Override Technology. He demonstrated new technology that allows a simple plug in to a data port in many vehicles to quickly and effectively change the digital odometer reading. More alarming, it is undetectable. He used a recent investigation in Southern California as a case study.

The subject of TRUECar Business Model and How It Works was presented by Pat Watson, Vice President, Industry Relations with TRUECar. After modification required by DMV, the TRUECar model has been approved for licensing in California.

Bruce Gould, Executive Director, Virginia Motor Vehicle Dealer Board moderated a panel discussion on Multiple Ways Internet Marketing Impacts the Dealer System along with panelists Aaron Jacoby, Esq., and Ken Murphy, Esq. with Arent Fox, and James Hess, Assistant General Counsel, Internet Marketing, CarMax. The Internet continues to grow as a marketing tool for dealers. As it does, state regulators will need to keep abreast of this developing industry.

Saturday was the final day of the conference and began with the topic Analysis of the NAMVBC's proactive response to TRUECar and its impact. A panel discussion included Greg Kirkpatrick, Executive Director, Arkansas Motor Vehicle Commission and Bruce Gould, Executive Director, Virginia Motor Vehicle Dealer Board.

The regular session was concluded and was continued with the business meeting of the government members with a roundtable discussion and ideas for the next meeting.

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The Order Confirming Decision to Sustain the Protest was unanimously adopted.

Referral to DMV

In Protest Nos. PR-2199-10 and PR-2201-10, the Board indicated in its orders confirming decision to sustain protest that it was possible that the Board may refer these matters to the Department of Motor Vehicles pursuant to Vehicle Code section 3050(c)(1) and (c)(3). Because Section 3050(c) provides in part that: "A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor…" this matter was considered only by the Public Members.

Michael J. Flanagan, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. Louis S. Chronowski, Esq., of Seyfarth Shaw LLP represented Respondent.

Pursuant to Vehicle Code section 3050(c)(1), the Board by a four-to-one vote referred this matter to DMV for investigation. A written report of the results is to be submitted to the Board within 60-90 days from the date of the meeting.

A LITTLE TRIVIA

WAZE – NEW NAVIGATION APP

A new phone app called Waze is close to replacing existing navigation systems. Waze works like a navigation system but relies on user-generated information. Like most systems, you can put in an address and get turn-by-turn directions to your destination. What Waze does differently is to collect information automatically from other drivers on the road using the app, analyzes it and informs drivers of upcoming traffic problems.

The information not only includes traffic density, but also construction, alternative routes and even speed-trap notifications from other drivers using the app. The more people that use the app, the better it gets. Not only is it easy, useful and impressive, the price tag is zero dollars. It can be downloaded from the Apple Store or the Android Marketplace. The reason the app stays free is advertising.

In its introduction video, Waze states that all of its maps may not be complete, but drivers using it can add new roads or construction projects, and delete old roads. This will be uploaded to the Waze network the next time you sync your phone, which allows the network of information to keep growing.

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