

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MAZDA MOTOR OF AMERICA, INC.,)
d/b/a MAZDA NORTH AMERICAN)
OPERATIONS,)
)
Petitioner,)
)
vs.) Case No. 01-2149
)
CSA IMPORTS, L.L.C.; LEGACY)
CADILLAC OLDSMOBILE NISSAN,)
INC.; AND ELTON S. WETTELAND,)
)
Respondents.)
_____)

RECOMMENDED ORDER OF DISMISSAL

This cause came before the undersigned on Petitioner's, Mazda Motor of America, Inc., d/b/a Mazda North American Operations, Motion for Entry of Recommended Order which was filed on June 4, 2001. Respondents requested an extension of time in which to file a response. The request was granted over objection of Petitioner. Respondent CSA Imports, L.L.C. d/b/a Buddy Hutchinson Mazda (CSA), filed a response objecting to the motion. Respondents Legacy Cadillac Oldsmobile Nissan, Inc. (Legacy) and Elton S. Wetteland (Wetteland) filed a Notification of Adoption of Co-Respondent's Response to Motion for Entry of Recommended Order on June 29, 2001. On July 25, 2001, an evidentiary hearing was heard on the motion.

This case commenced when Mazda filed a Verified Complaint on May 29, 2001, pursuant to Sections 320.643 and 320.644, Florida Statutes (2000). The Verified Complaint contests the proposed transfer of ownership of CSA to Legacy and asserts that Sections 320.643 and 320.644, Florida Statutes, are not applicable to the proposal, insofar as those statutes purport to require Mazda to consider and approve the proposed transfer of ownership and management of the dealership, as part of a proposed relocation of the dealership.

The pending Motion for Entry of Recommended Order is in the nature of Mazda's filing a motion to dismiss its own complaint. Mazda seeks to obtain a ruling that the proposed transfer is not within the scope of Section 230.643, Florida Statutes, because it also proposed a simultaneous relocation of the dealership. Further, Mazda asserts that the proposal to transfer executive management control of the dealership to Wetteland is part of a proposal for relocation of the dealership and therefore does not invoke Section 320.644, Florida Statutes.

Section 230.643, Florida Statutes, states in pertinent part that, "[n]o such transfer, assignment, or sale will be valid unless the transferee agrees in writing to comply with all requirements of the franchise agreement." Mazda asserts that Legacy did not comply with this statutory requirement. Specifically, the franchise agreement in effect between Mazda and

CSA provides that the only authorized location for all operations of the dealership is 2898 U.S. 1 South, St. Augustine, Florida. The evidence shows that the proposed transfer of ownership is contingent on Mazda's approval of the relocation of the dealership to another location. The proposed asset purchase agreement references this proposed relocation as does correspondence from Legacy to Mazda which states, "[I]t is my intent, pending Mazda approval, to relocate the aforementioned Mazda franchise." Moreover, the proposal for change of ownership, management, and relocation must be viewed in its totality. Hawkins v. Ford Motor Co., 748 So. 2d 993 (Fla. 1999).

The issue raised in the instant case was addressed and resolved in the case of Gus Machado Buick-GMC Truck, Inc. v. General Motors Corp., 623 So. 2d 810, 813 (Fla. 1st DCA 1993):

. . . we agree with the Department's implicit construction of section 320.643(1), recognizing that a 'transfer' of a motor vehicle dealership does not include a relocation. 'Transfer' is defined as 'chang[ing] over the possession or control of (as, to transfer a title to land).' Black's Law Dictionary 1497 (6th ed. 1990). Location is certainly an important consideration in any type of franchise agreement, and it is undisputed that the franchise agreement at bar contemplates a specific address. Thus, it was reasonable for the Department to interpret the transfer of a franchise under section 320.643(1) as encompassing only use of the same location and not a relocation.

* * *

To conclude, as it is undisputed that the proposed transfer contemplated a relocation of a dealership, the Department could reasonably interpret the intended transfer as failing to comply with the 'franchise then in effect,' as required by section 320.643(1), which thus rendered the proposed transfer invalid. It therefore follows that the provisions of section 320.643(1) are inapplicable to the proposed transfer, and the dismissal of GM's complaint, or its failure to protest Potmakin's qualifications in accordance with the statute, does not result in the transfer of the franchise by operation of law. We therefore affirm the order of dismissal in Case No. 92-2644.

Respondents invite reconsideration of Machado. Respondents' invitation to reconsider case precedent is declined.

Accordingly, it is recommended that Department of Highway Safety and Motor Vehicles enter a final order dismissing the Verified Complaint.

DONE AND ENTERED this 27th day of July, 2001, in Tallahassee, Leon County, Florida.

BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.