

9-10-04

FILED

STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

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DOAH CASE NO. 03-4251
FINAL ORDER NO. HSMV 04-652-FOF-DMV

PALM BEACH IMPORTS, INC., d/b/a
BRAMAN MOTORCARS,

AT

Petitioner,

JUL-CLOS

v.

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,

Respondent,

and

BMW OF NORTH AMERICA, LLC, AND
POMPANO IMPORTS, INC., d/b/a
VISTA MOTORS,

Intervenors.

_____ /

FINAL ORDER

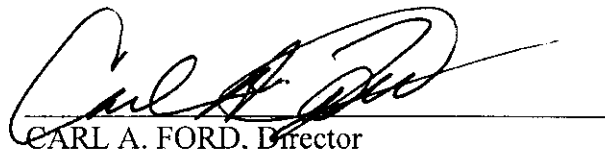
This matter came before the Department for entry of a Final Order upon submission of the Recommended Order by John G. Van Laningham, an Administrative Law Judge of the Division of Administrative Hearings, a copy of which is attached and incorporated by reference in this order¹. The Department hereby adopts the Recommended Order entered and filed September 10, 2004 as its Final Order in this matter.

¹ Petitioner, Palm Beach Imports, Inc., d/b/a Braman Motorcars, filed exceptions to the Recommended Order and Intervenor, Pompano Imports, Inc. d/b/a Vista Motors filed a Response to those exceptions, to which BMW of North America, LLC, filed a joinder. The exceptions are ruled on in the Appendix to this Final Order.

Accordingly, it is

ORDERED and ADJUDGED that Vista Motors' new BMW dealership at 4401 W. Sample Road, Coconut Creek, Florida having resulted from the relocation and reopening of Vista Motors' former BMW dealership at 700 North Federal Highway, Pompano Beach, Florida which reopening occurred within twelve (12) months after the closure of the former dealership and at a location meeting the geographical requirements of Section 320.642(5)(b), Florida Statutes, cannot be considered an additional motor vehicle dealership subject to protest.

DONE AND ORDERED this 4th day of November 2004, in Tallahassee, Leon County, Florida.



CARL A. FORD, Director
Division of Motor Vehicles
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, Florida 32399

Filed with the Clerk of the
Division of Motor Vehicles
this 4th day of November, 2004.

NOTICE OF APPEAL RIGHTS

Judicial review of this order may be had pursuant to section 120.68, Florida Statutes, in the District Court of Appeal for the First District, State of Florida, or in any other district court of appeal of this state in an appellate district where a party resides. In order to initiate such review, one copy of the notice of appeal must be filed with the Department and the other copy of the notice of appeal, together with the filing fee, must be filed with the court within thirty days of the filing date of this order as set out above, pursuant to Rules of Appellate Procedure.

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**APPENDIX TO FINAL ORDER
DOAH CASE NO. 03-4251
FINAL ORDER NO. HSMV 04-XXX-FOF-DMV**

RULING ON PETITIONER'S EXCEPTIONS TO RECOMMENDED ORDER

The following numbered rulings correspond to the numbered exceptions that also correspond to the numbered paragraphs of the Recommended Order.

Findings of Fact

7. Rejected; the finding is based on competent substantial evidence.
8. Rejected; the finding is based on competent substantial evidence.
10. Rejected; the finding is based on competent substantial evidence.
11. Rejected; the finding is based on competent substantial evidence.
16. Rejected; the finding is based on competent substantial evidence.
19. Rejected; the finding is based on competent substantial evidence.
20. Rejected; the finding is based on competent substantial evidence.
21. Rejected as unaccepted argument and the finding is based on competent substantial evidence.
28. Rejected; the finding is both relevant and supported by competent substantial evidence.
29. Rejected; the finding is both relevant and supported by competent substantial evidence.
30. Rejected; the finding is both relevant and supported by competent substantial evidence.
31. Rejected as unaccepted argument and the finding is based on competent substantial evidence.

32. Rejected; the finding is both relevant and supported by competent substantial evidence.

Vocabulary, Incipient Policies and Braman's Theory of the Case

33. The exceptions to paragraphs 33 through 53 are rejected. These paragraphs generally constitute discussion with which the Department concurs and are otherwise based on competent substantial evidence.

42. This exception is rejected. It constitutes unaccepted argument and is otherwise based on competent substantial evidence.

Conclusions of Law

55, 56, 59, 60, and 62. These exceptions are rejected for being unaccepted countervailing argument.