

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SUNL GROUP, INC. AND COASTAL)
POWERSPORTS,)
)
Petitioners,)
)
vs.) Case No. 07-3673
)
WHOLESALE NATION AUTOMOTIVE,)
INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to Notice, this cause came on formal hearing before Diane Cleavinger, duly-designated Administrative Law Judge of the Division of Administrative Hearings on November 8, 2007, in Fort Walton Beach, Florida.

APPEARANCES

For Petitioners: No appearance

For Respondent: David Wray
Wholesale Nation Automotive, Inc.
319 Miracle Strip Parkway
Fort Walton Beach, Florida 32548

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioners are entitled to a motor vehicle dealership that is proposed to be located in Fort Walton Beach, Florida.

PRELIMINARY STATEMENT

On August 3, 2007, SunL Group, Inc. and Coastal Powersports (Petitioners) published a Notice of Publication for a New Point Franchise Motor Vehicle Dealer in a County of Less than 300,000 Population in the Florida Administrative Weekly. The proposed dealership was to be located in Fort Walton Beach, Florida. On August 13, 2007, Wholesale Nation Automotive, Inc. (Respondent) filed a Petition of Complaint in letter form, protesting the establishment of the franchise at its proposed location. The case was forwarded to the Division of Administrative Hearings to conduct the final hearing in this matter.

This cause came on for hearing as noticed. After waiting more than an hour, the Petitioners failed to appear to prosecute their claim. Respondent was present and prepared to go forward with the hearing. The hearing was called to order and Respondent presented evidence regarding their protest.

FINDINGS OF FACT

1. The evidence showed that the dealership proposed by Petitioners would sell the same line and make of motorcycles as those sold by Respondent. The proposed dealership would also compete in the Respondent's territory since it would be located in the same county as Respondent and would be within 20 miles of Respondent. Respondent has standing to protest the establishment of the proposed dealership.

2. On September 18, 2007, a Notice of Hearing setting the date, time and location of final hearing was issued in this case. The Notice of Hearing was mailed to the last known, valid addresses of the Petitioners, which were also the addresses provided in Petitioners' Notice of Publication. Neither Notice of Hearing was returned.

3. This cause came on for hearing as noticed. After waiting more than an hour, the Petitioners failed to appear to prosecute their claim. There has been no communication from the Petitioners before, during, or since the hearing to indicate that they would not be attending the final hearing.

4. Because of Petitioners' failure to appear, there was no evidence to demonstrate that Petitioners are entitled to a franchise motor vehicle dealership in Fort Walton Beach, Florida. Absent such evidence, the establishment of the proposed dealership should be denied.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

6. The Department of Highway Safety and Motor Vehicles (Department) is the agency responsible for regulating the licensing and franchising of motor vehicle dealers. §§ 320.60-320.70, Fla. Stat.

7. Section 320.642(1), Florida Statutes, requires a motor vehicle dealer who proposes to establish an additional motor vehicle dealership within an area already represented by the same line-make vehicle to give written notice to the Department of its intent to establish a new franchise. The statute also provides that any affected dealership may protest the establishment of a new franchise in its territory.

8. Section 320.642(2), Florida Statutes, establishes the standards of review to determine if establishment of a new, competing motor vehicle franchise should be granted. Section 360.642 (2)(a), Florida Statutes, states in relevant part:

An application for a motor vehicle dealer license in any community or territory shall be denied when:

* * *

2. The licensee fails to show that the existing franchised dealer . . . are not providing adequate representation of such line-make motor vehicles in such . . . territory. The burden of proof in establishing inadequate representation shall be on the licensee. (emphasis supplied)

9. In this case, Petitioners, as the licensees, failed to appear at the hearing after proper Notice of the hearing was issued. Because Petitioners failed to appear, there was no evidence that Respondent was not adequately representing the territory in which the proposed dealership intends to locate was not presented. Absent such evidence, Petitioners have not

carried their burden of proof in this matter and the establishment of the proposed franchise should be denied.

RECOMMENDATION

Accordingly, in consideration of the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that a final order be entered by the Florida Department of Highway Safety and Motor Vehicles denying the establishment of Petitioners' proposed franchise.

DONE AND ENTERED this 31st day of January, 2008, in Tallahassee, Leon County, Florida.

Diane Cleavinger

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of January, 2008.

COPIES FURNISHED:

Michael J. Alderman, Esquire
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Room A-432
2900 Apalachee Parkway
Tallahassee, Florida 32399-0635

Carl A. Ford, Director
Division of Motor Vehicles
Neil Kirkman Building, Room B-439
Tallahassee, Florida 32399-0635

Judson M. Chapman, General Counsel
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
2900 Apalachee Parkway
Tallahassee, Florida 32399-0500

David Wray
Wholesale Nation Automotive, Inc.
319 Miracle Strip Parkway
Fort Walton Beach, Florida 32548

Mei Zhou
SunL Group, Inc.
8551 Esters Boulevard
Irvine, Texas 75063

Curtis Mitchell
Coastal Powersports
12 Eglin Parkway Southeast
Fort Walton Beach, Florida 32548

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 of Dismissal. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.