

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

VENTO NORTH AMERICA, LLC, AND )  
DK CYCLE, INC., )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 07-4551  
 )  
UVM TRADING INC., d/b/a CUBI-K, )  
SCOOTERS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes,<sup>1</sup> before Stuart M. Lerner, a duly-designated administrative law judge of the Division of Administrative Hearings (DOAH), on March 26, 2008, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioners: No appearance

For Respondent: Manuel A. Ramirez, Esquire  
1200 Brickell Avenue, Suite 1440  
Miami, Florida 33131

STATEMENT OF THE ISSUE

Whether Vento North America, LLC (Vento) should be permitted to establish an additional dealership for the sale of

Qianjiang motorcycles at 1333 Washington Avenue, Miami Beach, Florida, over Respondent's protest.

PRELIMINARY STATEMENT

On September 7, 2007, a notice was published in Florida Administrative Weekly that Vento intended "to allow the establishment of DK Cycle, Inc., as a dealership for the sale of . . . Qianjiang (QIAN) motorcycles at 1333 Washington Avenue, Miami Beach ([Miami-]Dade County), Florida 33139 . . . ." <sup>2</sup> On September 28, 2007, Respondent filed with Department of Highway Safety and Motor Vehicles (Department) a "petition/complaint" protesting the establishment of this additional dealership. On October 3, 2007, the matter was referred to DOAH to "be heard by an Administrative Law Judge."

The final hearing was scheduled for March 26, 2008. Petitioners and Respondent were provided with written notice of the scheduled hearing in accordance with Section 120.569(2)(b), Florida Statutes. Such notice was in the form of a Notice of Hearing by Video Teleconference mailed on October 30, 2007, to Respondent's counsel of record, Manuel Ramirez, Esquire, and to Petitioners' representatives.

As noted above, the final hearing in this case was held, as scheduled, on March 26, 2008. Respondent appeared at the hearing through its counsel, Mr. Ramirez. Petitioners, on the other hand, made no appearance.

One witness, Anabella Cabello, Respondent's president, testified at the hearing. In addition to Ms. Cabello's testimony, one exhibit (Respondent's Exhibit 1) was offered and received into evidence.

At the conclusion of the evidentiary portion of the hearing, the undersigned inquired of Respondent's counsel, Mr. Ramirez, as to whether he would be submitting a proposed recommended order. Mr. Ramirez responded in the negative.

#### FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following findings of fact are made:

1. Respondent is an existing franchised dealer of Qianjiang motorcycles.
2. Its dealership is located at 7341 Collins Avenue in Miami Beach, Florida.
3. The driving distance between Respondent's dealership and the location of the new dealership Vento proposes to establish is 5.6 miles.

#### CONCLUSIONS OF LAW

4. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto pursuant to Chapter 120, Florida Statutes.
5. Vento is seeking the Department's approval of a proposal to establish a new dealership for the sale of Qianjiang

motorcycles at 1333 Washington Avenue in Miami-Beach, Florida. It is seeking such approval pursuant to Section 320.642, Florida Statutes.

6. Subsection (2)(a) of Section 320.642, Florida Statutes, provides that such approval shall be denied if:

1. A timely protest is filed by a presently existing franchised motor vehicle dealer with standing to protest as defined in subsection (3); and

2. The licensee fails to show that the existing franchised dealer or dealers who register new motor vehicle retail sales or retail leases of the same line-make in the community or territory of the proposed dealership are not providing adequate representation of such line-make motor vehicles in such community or territory. The burden of proof in establishing inadequate representation shall be on the licensee.

7. Pursuant to Subsection (3)(b)1. of Section 320.642, Florida Statutes, "if the proposed additional . . . motor vehicle dealer is to be located in a county with a population of more than 300,000," such as in the instant case, "[a]ny existing motor vehicle dealer or dealers of the same line-make hav[ing] a licensed franchise location within a radius of 12.5 miles of the location of the proposed additional . . . motor vehicle dealer" has standing to file a "protest," within the meaning of Subsection (2)(a)1. of the statute.

8. With respect to the proposed new dealership in the instant case, Respondent is such an "existing motor vehicle dealer" who has standing to file a protest.

9. By filing its protest and establishing (through its evidentiary presentation at hearing) its standing to do so, Respondent effectively imposed upon Vento, by operation of the provisions of Subsection (2)(a)2. of Section 320.642, Florida Statutes, the burden of proving there is "inadequate representation" in the community or territory of the proposed new dealership.

10. Not having presented any evidence at the final hearing, Vento failed to meet this burden of proof.

11. The approval that it is seeking in the instant case must therefore be denied.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that the Department issue a Final Order denying Vento approval to establish a new Qianjiang motorcycle dealership at 1333 Washington Avenue, Miami Beach, Florida.

DONE AND ENTERED this 26th day of March, 2008, in  
Tallahassee, Leon County, Florida.



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STUART M. LERNER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of march, 2008.

ENDNOTES

<sup>1</sup> All references in this Recommended Order to Florida Statutes are to Florida Statutes (2007).

<sup>2</sup> The published notice also advised of Vento's intent to establish, at the same location, a new dealership for the sale of Jialing motorcycles. At the final hearing in the instant case, Respondent clarified that its protest was directed only to the proposed new Qianjiang motorcycle dealership.

COPIES FURNISHED:

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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.

