

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LAMBRETTA INTERNATIONAL, LLC,)
AND RETRO UNLIMITED, INC.,)
)
 Petitioners,)
)
vs.) Case No. 08-2474
)
SCOOTER ESCAPES, LLC, d/b/a)
SCOOTER ESCAPES,)
)
 Respondent.)

)

RECOMMENDED ORDER

On July 30, 2008, an administrative hearing in this case was held in Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners: (No appearance)

For Respondent: Chris Densmore, pro se
Scooter Escapes, LLC, d/b/a
Scooter Escapes
1450 1st Avenue North
St. Petersburg, Florida 33705

STATEMENT OF THE ISSUE

The issue in the case is whether an application for a motor vehicle dealer license filed by Lambretta International, LLC, and Retro Unlimited, Inc., should be approved.

PRELIMINARY STATEMENT

By Notice published in the Florida Administrative Weekly (Volume 34, Number 15, April 11, 2008) the Department of Highway Safety and Motor Vehicles (Department) gave notice that Petitioner Lambretta International, LLC, was seeking to establish a new point motor vehicle dealership in St. Petersburg, Florida, with Petitioner Retro Unlimited, Inc. A challenge to the establishment of the dealership was filed with the Department by an existing motorcycle dealership, Scooter Escapes, LLC, d/b/a Scooter Escapes (Respondent).

By letter dated May 16, 2008, the Department forwarded the challenge to DOAH. On May 21, 2008, an Initial Order was issued, directing the parties to identify the anticipated length of the hearing and dates upon which the parties were available. No response was filed by either party. The Administrative Law Judge thereafter scheduled the hearing for July 30, 2008, in Tallahassee, Florida. No party filed any objection related to the date or location of the scheduled hearing.

At the time of the hearing, there was no appearance by Petitioners Lambretta International, LLC, or Retro Unlimited, Inc. Chris Densmore, the owner of the Respondent, appeared at the hearing to represent the Respondent.

There were no witnesses or exhibits admitted into evidence. No transcript of the hearing was filed. No proposed recommended orders were filed.

FINDING OF FACT

1. There is no evidence that the existing franchise dealer is not providing adequate representation within the territory of the motor vehicles at issue in this proceeding.

CONCLUSIONS OF LAW

2. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2008).

3. Subsection 320.642(2)(a), Florida Statutes (2007), provides as follows:

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

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. (Emphasis supplied)

4. The licensee in this case is Petitioner Lambretta International, LLC. See §§ 320.60(8) and 320.61, Fla. Stat. (2007).

5. As the licensee, Petitioner Lambretta International, LLC, has the burden of establishing compliance with applicable statutory requirements by a preponderance of the evidence. Dept. of Banking and Finance, Div. of Securities and Investor Protection v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). The failure to appear at the hearing or to otherwise provide competent evidence precludes the Petitioners from meeting the burden in this case. Accordingly, the application for a motor vehicle dealer license at issue in this proceeding must be denied.

6. On July 28, 2008, two days prior to the hearing, various documents were filed with DOAH which appear to allege that the line-make at issue in this proceeding is not the same as the line-make sold by the Respondent. The documents are uncorroborated hearsay and can not serve as the basis for any factual findings in this case. See § 120.57(1)(c), Fla. Stat. (2007).

RECOMMENDATION

Based on the foregoing Finding of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Highway Safety and Motor Vehicles enter a final order denying the application for

establishment of the motor vehicle dealer franchise at issue in this case.

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

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
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 26th day of August, 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

Caroline Khurana
Lambretta International, LLC
14339 Lake City Way Northeast
Seattle, Washington 98125

Chris Densmore
Scooter Escapes, LLC, d/b/a Scooter Escapes
1450 1st Avenue North
St. Petersburg, Florida 33705

Edward G. Dreyer, III
Retro Unlimited, Inc.
3200 Dr. Martin Luther King, Jr. Street North
St. Petersburg, Florida 33704

Carl A. Ford, Director
Division of Motor Vehicles
Highway Safety and Motor Vehicles
Neil Kirkman Building, Room B-439
2900 Apalachee Parkway
Tallahassee, Florida 32399-0500

Robin Lotane, General Counsel
Highway Safety and Motor Vehicles
Neil Kirkman Building
2900 Apalachee Parkway
Tallahassee, Florida 32399-0500

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.