

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SUNL GROUP, INC., AND AUTO)
STOP, INC., d/b/a MOTORSPORTS)
DEPOT,)
)
Petitioners,)
)
vs.) Case Nos. 08-3631
) 08-3632
MOBILITY TECH, INC., d/b/a)
CHARLIE'S SCOOTER DEPOT,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On February 5, 2009, an administrative hearing in these cases was conducted by video teleconference between Tallahassee and Tampa, Florida, before William F. Quattlebaum, Administrative Law Judge (ALJ), Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner SunL Group, Inc.:

(No appearance)

For Petitioner Auto Stop, Inc., d/b/a Motorsports Depot:

(No appearance)

For Respondent: (No appearance)

STATEMENT OF THE ISSUE

The issue in these cases is whether an application for motor vehicle dealer licenses filed by SunL Group, Inc., and Auto Stop, Inc., d/b/a Motorsports Depot, should be approved.

PRELIMINARY STATEMENT

By notices published in the Florida Administrative Weekly (Volume 34, Number 29; July 18, 2008), the Department of Highway Safety and Motor Vehicles (Department) gave notice that SunL Group, Inc. (SunL Group), was seeking to establish two new point motor vehicle dealerships in Lutz, Florida, with Auto Stop, Inc., d/b/a Motorsports Depot (Motorsports Depot). One of the dealerships was for the sale of motorcycles manufactured by Chunl Motorcycle Manufacturing Co. Ltd. (CHUA). The other dealership was for the sale of motorcycles manufactured by Shanghai Meitan Motorcycle Manufacturing Co. Ltd. (MEIT).

Challenges to the establishment of the dealerships were filed with the Department by an existing motorcycle dealership, Mobility Tech, Inc., d/b/a Charlie's Scooter Depot (Scooter Depot).

By letters dated July 23, 2008, the Department forwarded the challenges to the DOAH. On July 24, 2008, Initial Orders were issued, directing the parties to identify the anticipated length of the hearings and dates upon which the parties were available. No responses were filed by either party.

ALJ Carolyn Holifield thereafter scheduled the cases for hearing and subsequently consolidated the cases and issued Amended Notices of Hearing. The notices were not returned and were apparently delivered to the addresses of record for the parties.

The consolidated cases were transferred to the undersigned ALJ on January 29, 2009.

At the time of the hearing, there was no appearance by any party. DOAH contacted the identified representatives for Motorsports Depot and Scooter Depot and was advised that neither party would be present for the hearing.

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

FINDINGS OF FACT

1. There was no evidence presented at the hearing to establish that Scooter Depot has a franchise agreement to sell or service Chunl Motorcycle Manufacturing Co. Ltd. (CHUA) motor vehicles, a line-make to be sold by Motorsports Depot.

2. There was no evidence presented at the hearing to establish that Scooter Depot has a franchise agreement to sell or service Shanghai Meitan Motorcycle Manufacturing Co. Ltd. (MEIT) motor vehicles, a line-make to be sold by Motorsports Depot.

3. There was no evidence presented at the hearing that the Scooter Depot dealership is physically located so as to meet the statutory requirements for standing to protest the establishment of the new point franchise motor vehicle dealerships.

CONCLUSIONS OF LAW

4. 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).

5. Section 320.642, Florida Statutes (2008), provides, in relevant part, as follows:

(2)(a) 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.

* * *

(3) An existing franchised motor vehicle dealer or dealers shall have standing to protest a proposed additional or relocated motor vehicle dealer where the existing

motor vehicle dealer or dealers have a franchise agreement for the same line-make vehicle to be sold or serviced by the proposed additional or relocated motor vehicle dealer and are physically located so as to meet or satisfy any of the following requirements or conditions:

(a) If the proposed additional or relocated motor vehicle dealer is to be located in a county with a population of less than 300,000 according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:

1. The proposed additional or relocated motor vehicle dealer is to be located in the area designated or described as the area of responsibility, or such similarly designated area, including the entire area designated as a multiple-point area, in the franchise agreement or in any related document or commitment with the existing motor vehicle dealer or dealers of the same line-make as such agreement existed upon October 1, 1988;

2. The existing motor vehicle dealer or dealers of the same line-make have a licensed franchise location within a radius of 20 miles of the location of the proposed additional or relocated motor vehicle dealer; or

3. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, such dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 20 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same county or any

county contiguous to the county where the additional or relocated dealer is proposed to be located.

(b) If the proposed additional or relocated motor vehicle dealer is to be located in a county with a population of more than 300,000 according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:

1. Any existing motor vehicle dealer or dealers of the same line-make have a licensed franchise location within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; or

2. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, such dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same county or any county contiguous to the county where the additional or relocated dealer is proposed to be located.

6. The licensees in these cases are SunL Group and Motorsports Depot. See §§ 320.60(8) and 320.61, Fla. Stat. (2008).

7. The alleged existing franchised motor vehicle dealer is Scooter Depot.

8. Scooter Depot failed to present any evidence at the hearing to establish that it meets the statutory requirements to establish standing to protest the establishment of the new point franchise motor vehicle dealerships at issue in these cases.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Highway Safety and Motor Vehicles enter a final order dismissing the protests filed by Mobility Tech, Inc., d/b/a Charlie's Scooter Depot, in these cases.

DONE AND ENTERED this 5th day of March, 2009, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of March, 2009.

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.