

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LS MOTORSPORTS, LLC, AND )  
MICHAEL J. KONCZAL, INC., )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 08-3784  
 )  
SEMINOLE SCOOTERS, INC., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On January 22, 2009, an administrative hearing in this case was held in St. Petersburg, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner LS MotorSports, LLC:

(No appearance)

For Petitioner Michael J. Konczal, Inc:

Michael Konczal, pro se  
Michael J. Konczal, Inc.  
1801 Twenty-Eighth Street, North  
St. Petersburg, Florida 33715

For Respondent: David Dubin, pro se  
Seminole Scooters, Inc.  
6227 Park Boulevard  
Pinellas Park, Florida 33781

STATEMENT OF THE ISSUE

The issue in the case is whether an application for a motor vehicle dealer license filed by LS Motorsports, LLC, and Michael J. Konczal, Inc., should be approved.

PRELIMINARY STATEMENT

By notice 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 LS MotorSports, LLC (LS MotorSports), was seeking to establish a new point motor vehicle dealership in St. Petersburg, Florida, with Michael J. Konczal, Inc., for the line-make "Chongqing Lifan Industry Group (CHOL)." A challenge to the establishment of the dealership was filed with the Department by an existing motorcycle dealership, Seminole Scooters, Inc. (Respondent).

By letter dated July 31, 2008, the Department forwarded the challenge to the Division of Administrative Hearings. On August 1, 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. The Respondent filed a response to the Initial Order, requesting that the hearing be scheduled in St. Petersburg, Florida, and the hearing was scheduled accordingly.

At the hearing, Petitioner, Michael Konczal, testified on his own behalf. The Respondent's representative testified on

behalf of the Respondent. No exhibits were offered into evidence.

No transcript of the hearing was filed. The Respondent filed a Proposed Recommended Order.

#### FINDINGS OF FACT

1. LS MotorSports is seeking to establish a new point motor vehicle dealership in St. Petersburg, Florida, for line-make Chongqing Lifan Industry Group (CHOL).

2. The Respondent is an existing franchise motor dealer for line-make Chongqing Lifan Industry Group (CHOL), located within 12.5 miles of the proposed new point motor vehicle dealership location. The majority of the Respondent's vehicle sales come from within a 12.5-mile radius of the proposed dealership.

3. The Respondent timely filed a protest of LS MotorSports' proposed dealership.

4. There is no evidence that the Respondent is not providing adequate representation within the territory of the motor vehicles at issue in this proceeding.

#### CONCLUSIONS OF LAW

5. 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).

6. Subsection 320.642(2)(a), Florida Statutes (2008), 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)

7. The licensees in this case are Petitioners, LS Motorsports, LLC, and Michael J. Konczal, Inc. See §§ 320.60(8) and 320.61, Fla. Stat. (2008).

8. As the licensees, the Petitioners have the burden of establishing compliance with applicable statutory requirements by a preponderance of the evidence presented at the hearing. § 320.642(2)(a)2., Fla. Stat. (2008). The Petitioners have failed to establish that the Respondent is not providing adequate representation of the line-make Chongqing Lifan Industry Group (CHOL).

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 19th day of February, 2009, in Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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WILLIAM F. QUATTLEBAUM  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of February, 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.