

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SUNL GROUP, INC., AND AUTO )  
STOP, INC., d/b/a MOTORSPORTS )  
DEPOT, )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 08-3786  
 )  
MOBILITY TECH, INC., d/b/a )  
CHARLIE'S SCOOTER DEPOT, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On February 3, 2009, an administrative hearing in this case was scheduled to be held in Tampa, Florida, before Jeff B. Clark, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: No appearance

For Respondent: No appearance

STATEMENT OF THE ISSUE

The issue is whether Petitioners are entitled to a motor vehicle dealership that is proposed to be located in Hillsborough County, Florida.

PRELIMINARY STATEMENT

On July 8, 2008, Petitioners, SunL Group, Inc., and Auto Stop, Inc., d/b/a Motorsports Depot, published a Notice of Publication for a New Point Franchise Motor Vehicle Dealer in a County of More than 300,000 Population in the Florida Administrative Weekly. Respondent, Mobility tech, Inc., d/b/a Charlie's Scooter Depot, on July 23, 2008, timely filed a protest with the Department of Highway Safety and Motor Vehicles. By letter dated July 31, 2008, the Department of Highway Safety and Motor Vehicles referred the matter to the Division of Administrative Hearings to assign an Administrative Law Judge to conduct a hearing "for the sole purpose of determining the propriety of the protest regarding issues specifically within the purview of Sections 320.642 and 320.699, Florida Statutes."

On August 12, 2008, a Notice of Hearing was mailed to all parties scheduling the final hearing for February 3, 2009, in Hillsborough County, Florida. No party responded to the Order of Pre-hearing Instructions mailed the same day. The hearing was convened as scheduled. No party appeared.

The hearing was not transcribed as no testimony was presented.

All statutory references are to Florida Statutes (2008), unless otherwise noted.

FINDINGS OF FACT

The following Findings of Fact are based on the documents which were forwarded to the Division of Administrative Hearings by the Department of Highway Safety and Motor Vehicles in this case: Notice of Publication for a New Point Franchise Motor Vehicle Dealer in a County of More than 300,000 Population, Florida Administrative Weekly, Volume 34, Number 29, July 18, 2008; and protest letter dated July 23, 2008, from Carlos A. Urbizi to Nalini Vinayak, Department of Highway Safety and Motor Vehicles.

1. Respondent is an existing franchised dealer of Shanghai Shenke Motorcycles.

2. Petitioners have proposed the establishment of a new dealership to sell the same line-make of motorcycles as those sold by Respondent.

3. Respondent's dealership is located at 5702 North Florida Avenue, Tampa, Hillsborough County, Florida.

4. Petitioners' proposed dealership would be located at 17630 U.S. 41 North, Lutz, Hillsborough County, Florida 33549.

5. The proposed dealership is within a 12.5-mile radius of Respondent's dealership.

6. Respondent has standing to protest the establishment of the proposed dealership.

7. No evidence was received showing that Respondent was "not providing adequate representation" of the same line-make motor vehicles in the community or territory.

CONCLUSIONS OF LAW

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

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

10. Subsection 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 Highway Safety and Motor Vehicles 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.

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

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.

12. Pursuant to Subsection 320.642(3)(b)1., Florida Statutes, "if the proposed additional . . . motor vehicle dealer is to be located in a county with a population of more than 300,000," as in the instant case, then any existing motor vehicle dealer of the same line-make whose licensed franchise location is within a radius of 12.5 miles of the proposed additional dealer has standing to file a protest within the meaning of Subsection 320.642(2)(a)1., Florida Statutes.

13. Subsection 320.642(8), Florida Statutes, states:

The department shall not be obligated to determine the accuracy of any distance asserted by any party in a notice submitted to it. Any dispute concerning a distance measurement asserted by a party shall be resolved by a hearing conducted in accordance with ss. 120.569 and 120.57.

14. Respondent's assertion in its protest letter that the proposed franchise is within 12.5 miles of the existing franchise location is not challenged. Respondent is an existing motor vehicle dealer who has standing to file a protest of the proposed new dealership in this case.

15. The burden is, therefore, on Petitioners to prove that there is "inadequate representation" in the community or territory of the proposed new dealership according to the criteria set forth in Subsection 320.642(2)(b), Florida Statutes.

16. Petitioners made no appearance and presented no evidence at the final hearing. Petitioners failed to meet their burden of proof.

17. The approval sought by Petitioners must, therefore, be denied.

#### 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 denying the establishment of Petitioners' proposed franchise dealership.

DONE AND ENTERED this 20th day of February, 2009, in  
Tallahassee, Leon County, Florida.



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JEFF B. CLARK  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th 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.