

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VENTRO NORTH AMERICA, LLC AND)
H. LONG INVESTMENTS CORP.,)
)
Petitioner,)
)
vs.) Case No. 08-3988
)
BEST BUY VEHICLES, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER OF DISMISSAL

Pursuant to notice a hearing was conducted on October 30, 2008, in Vero Beach, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Heidi S. Long, President
H. Long Investments Corp. d/b/a
Tropical Scooters of Vero
4901 North U. S. Highway 1, Unit J
Vero Beach, Florida 32967

For Respondent: No Appearance

STATEMENT OF THE ISSUE

Whether the proposed dealership should be approved.

PRELIMINARY STATEMENT

The Florida Department of Highway Safety and Motor Vehicles forwarded the instant case to the Division of Administrative Hearings for formal proceedings on August 18, 2008. Thereafter,

the case was scheduled for hearing and the parties were provided notice of the hearing location and time.

At the hearing, the Respondent, Best Buy Vehicles, Inc. (Respondent), did not appear. The Petitioner, H. Long Investments, Corp. d/b/a Tropical Scooters of Vero (Petitioner), did appear and presented evidence in support of the proposed dealership.

A transcript of the proceeding was not filed. The parties were granted ten days from the hearing date within which to file proposed recommended orders. By letter filed November 12, 2008, the Respondent requested that the case be held in St. Lucie County "due to the number of cases like this our company endures on an annual basis." The Petitioner responded to that letter on November 17, 2008. The Respondent's letter has been treated as a request to re-open the record and is addressed below.

FINDINGS OF FACT

1. On August 1, 2008, in the Florida Administrative Weekly, Volume 34, Number 31, a Notice of Publication for a New Point Franchise Motor Vehicle Dealer in a County of Less than 300,000 Population was published. The notice provided that Vento North America, LLC, intended to allow the establishment of H. Long Investments Corp. d/b/a Tropical Scooters of Vero, as a dealership for the sale of motorcycles manufactured by Qianjaing Motorcycle Group Corp. (QINJ) at 4901 North U.S. Highway 1, Unit J, Vero Beach (Indian River County), Florida.

2. On August 12, 2008, the Respondent timely filed a protest of the establishment of the Petitioner's dealership and represented that 25 percent of its retail sales were within a 20-mile straight line distance of the proposed dealership during any 12-month period out of the 36-month period immediately preceding the filing of the protest.

3. Based upon the Petitioner's evidence, its proposed dealership location is not less than 21.51 miles from the Respondent's dealership.

4. The Respondent did not establish that any of its sales are within 20 miles of the proposed dealership.

5. The Respondent did not establish that it currently markets any motorcycle to be sold by the proposed dealership. More specifically, the Respondent did not offer evidence that it has an agreement for the same line-make vehicle to be sold by the proposed dealer.

6. Vento North America, the distributor of the motorcycle brand/model to be sold at the proposed dealership, did not attend the hearing.

7. Notice of the formal hearing was provided to all parties of record at their addresses of record.

8. The Respondent did not timely contest the location, date, or time for the hearing.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569, and 120.57(1), Fla. Stat (2008).

10. Section 320.605, Florida Statutes (2008), provides:

It is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers.

11. Section 320.642 Florida Statutes (2008) provides, in part:

(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.

12. The Respondent's request for a hearing in St. Lucie County, filed after the hearing had occurred, was untimely. If treated as Motion to Re-Open the Record, it is denied. The Respondent was provided timely notice of the hearing date and location. The Respondent provided no reasonable excuse for the failure to attend the hearing in this cause. Moreover, to further delay the rendition of this order is prejudicial to the Petitioner.

13. The record in this cause is devoid of any evidence supporting the allegations set forth in the Respondent's request

for hearing. The Respondent has failed to establish standing to challenge the proposed dealership as a matter of law.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Department of Highway Safety and Motor Vehicles enter a Final Order dismissing the protest filed by the Respondent and approving the dealership proposed by this Petitioner.

DONE AND ENTERED this 16th day of December, in Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of December, 2008.

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.