

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LS MOTORSPORTS, LLC AND MICHAEL)
J. KONCZAL, INC.,)
)
Petitioners,)
)
vs.) Case No. 08-4242
)
SCOOTER ESCAPES,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On March 5, 2009, an administrative hearing in this case was held in Tallahassee, 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:
(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 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, Scooter Escapes (Respondent).

By letter dated August 25, 2008, the Department forwarded the challenge to the Division of Administrative Hearings. On August 28, 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 Order stated that failure to respond would be deemed a waiver of venue rights in which event the hearing would be scheduled in Tallahassee. No response to the Initial Order was filed. The hearing was scheduled in Tallahassee for March 5, 2009, a date in accordance with Section 320.699(2), Florida Statutes (2008).

At the hearing, there was no appearance by, or on behalf of, either Petitioner. The Respondent's owner, Chris Densmore, testified on behalf of the Respondent. No exhibits were offered

into evidence. No transcript of the hearing was filed. No proposed recommended orders were filed.

FINDINGS OF FACT

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

2. The Respondent is an existing franchise motor vehicle dealer for line-make 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 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 3rd day of April, 2009 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
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of April, 2009.

COPIES FURNISHED:

Electra Theodorides-Bustle, Executive Director
Department of Highway Safety and
Motor Vehicles
2900 Apalachee Parkway
Tallahassee, Florida 32399-0500

Robin Lotane, General Counsel
Department of Highway Safety and
Motor Vehicles
2900 Apalachee Parkway
Tallahassee, Florida 32399-0500

Michael James Alderman, Esquire
Department of Highway Safety and
Motor Vehicles
Neil Kirkman Building, Room A-432
2900 Apalachee Parkway
Tallahassee, Florida 32344

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

Michael Konczal
Michael J. Konczal, Inc.
1801 28 Street North
St. Petersburg, Florida 33715

Mathu Solo
LS Motorsports, LLC
10215 South Sam Houston Parkway West, Suite 100
Houston, Texas 77071

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.