

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MOTO DEALER IMPORT, LLC AND BIG )  
BOYS TOYS FLORIDA, LLC, )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 08-4547  
 )  
MOTO IMPORT DISTRIBUTORS, INC., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to Notice, this cause came on for formal hearing before Diane Cleavinger, duly-designated Administrative Law Judge, Division of Administrative Hearings on April 1, 2009, in Panama City, Florida.

APPEARANCES

For Petitioner: No appearance

For Respondent: Wayne Wooten  
Moto Imports Distributors, LLC  
12202 Hutchinson Boulevard, Suite 72  
Panama City Beach, Florida 32407

STATEMENT OF THE ISSUE

The issue in this cause is whether Petitioners are entitled to a motor vehicle dealership that is proposed to be located in Panama City Beach, Florida.

PRELIMINARY STATEMENT

On August 22, 2008, Moto Dealer Import, LLC, and Big Boy Toys Florida, LLC (Petitioners) published a Notice of Publication for a New Point Franchise Motor Vehicle Dealer in a County of Less than 300,000 Population in the Florida Administrative Weekly. The proposed dealership was to be located in Panama City Beach, Florida. On September 7, 2008, Moto Import Distributors, LLC (Respondent) filed a Petition of Complaint in letter form, protesting the establishment of the franchise at its proposed location. The case was forwarded to the Division of Administrative Hearings to conduct the final hearing in this matter.

This cause came on for hearing as noticed. After waiting more than 15 minutes, Petitioners failed to appear to prosecute their claim. Respondent, likewise, did not appear.

FINDINGS OF FACT

1. On November 4, 2008, a Notice of Hearing setting the date, time and location of final hearing was issued in this case. The Notice of Hearing was mailed to the last known, valid addresses of the Petitioners, which were also the addresses provided in Petitioners' Notice of Publication. Neither Notice of Hearing was returned.

2. This cause came on for hearing as noticed. After waiting more than 15 minutes, Petitioners failed to appear to

prosecute their claim. There has been no communication from the Petitioners, before, during, or since the hearing to indicate that they would not be attending the final hearing.

3. Because of Petitioners' failure to appear, there was no evidence to demonstrate that Petitioners are entitled to a franchise motor vehicle dealership in Panama City Beach, Florida. Absent such evidence, the establishment of the proposed dealership should be denied.

#### CONCLUSIONS OF LAW

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

5. The Department of Highway Safety and Motor Vehicles (Department) is the agency responsible for regulating the licensing and franchising of motor vehicles dealers. §§ 320.60-320.70, Fla. Stat. (2008).

6. Section 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 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.

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

An application for a motor vehicle dealer license in any community or territory shall be denied when:

\* \* \*

2. The licensee fails to show that the existing franchise dealer . . . are not providing adequate representation of such line-make motor vehicles in such . . . territory. The burden of proof in establishing inadequate representation shall be on the licensee. (emphasis supplied)

8. In this case, Petitioners, as the licensees, failed to appear at the hearing after proper Notice of the hearing was issued. Because Petitioners failed to appear, no evidence that Respondent was not adequately representing the territory in which the proposed dealership intends to locate was presented. Absent such evidence, Petitioners have not carried their burden of proof in this matter and the establishment of the proposed franchise should be denied.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Florida Department of Highway Safety and Motor Vehicles denying the establishment of Petitioners' proposed franchise.

DONE AND ENTERED this 15th day of April, 2009, in Tallahassee, Leon County, Florida.

*Diane Cleavinger*

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DIANE CLEAVINGER  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of April, 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.