STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LS MOTORSPORTS, LLC AND THE ORLANDO SCOOTER SHOP, LLC,	)	
Petitioners,	)	
vs.	)	Case No. 08-4570
JAMES SURSELY, d/b/a ACTION ORLANDO MOTORSPORTS,	)	
Respondent.	)	

RECOMMENDED ORDER

This Cause came on for formal administrative hearing before Daniel M. Kilbride, Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH), on March 24, 2009, by video teleconference between Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioners: No appearance

For Respondent: James Sursely, pro se
Action Orlando Motorsports
306 West Main Street
Apopka, Florida 32712

STATEMENT OF THE ISSUE

Whether Petitioners are entitled to establish a new motor vehicle dealership that is proposed to be located in Winter

Park, Florida, for the sale of motorcycles manufactured by Chunfeng Holding Group Co. Ltd. (CFHG).

PRELIMINARY STATEMENT

On August 15, 2008, LS Motorsports, LLC, and The Orlando Scooter Shop, LLC, (Petitioners) 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 Action Orlando Motorsports filed a protest with the Department of Highway Safety and Motor Vehicles (Department) on September 12, 2008. By letter dated September 16, 2008, the Department referred the matter to DOAH 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."

This matter was set for hearing by Notice of Hearing, dated October 15, 2008, to all parties of record. On March 12, 2009, an Amended Notice of Hearing by Video Teleconference was sent to all parties of record. None of the parties filed a response to the undersigned Administrative Law Judge’s Order of Pre-hearing Instructions. After waiting approximately 15 minutes, the hearing was convened as scheduled. Respondent was present and ready to proceed. Petitioners made no appearance.

James Sursely, the owner of Action Orlando Motorsports, testified at the hearing.

The hearing was not transcribed. Respondent waived the filing of a proposed recommended order. All references to the Florida Statutes are to the 2008 edition unless otherwise indicated.

FINDINGS OF FACT

1. Respondent is an existing franchised dealer of motorcycles manufactured by Chunfeng Holding Group. Co., Ltd. (CFHG).

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

3. Respondent's dealership is located at 306 West Main Street, Apopka, Florida 32712.

4. Petitioners' proposed dealership would be located at 1710 West Fairbanks Avenue, Winter Park, Florida 32789.

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 presented that there is inadequate representation of such line-make motor vehicles in such community.

CONCLUSIONS OF LAW

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

9. The Department is the agency responsible for regulating the licensing and franchising of motor vehicle dealers. §§ 320.60-320.70, 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 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.

12. 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.

13. Pursuant to Subsection (3)(b)1. of Section 320.642, 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 (2)(a)1. of the statute.

14. 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 dealership.

DONE AND ENTERED this 7th day of April, 2009, in Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th 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.