

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GALAXY POWERSPORTS, LLC, d/b/a)
JCL INTERNATIONAL, LLC, AND)
MEGA POWER SPORTS CORP.,)
)
Petitioners,)
)
vs.) Case No. 08-5247
)
ACTION ORLANDO MOTORSPORTS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On January 5, 2009, an administrative hearing in this case was held in Orlando, Florida, before Lawrence P. Stevenson, Administrative Law Judge, Division of Administrative Hearings (DOAH).

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

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

PRELIMINARY STATEMENT

On September 19, 2008, Galaxy Powersports, LLC d/b/a JCL International, LLC and Mega Power Sports Corp. (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 October 10, 2008. By letter dated October 17, 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."

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. Respondent's Composite Exhibit 1 was offered and received into evidence.

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 Zhejiang Taizhou Wangye Power Co. Ltd. (ZHEJ).

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 821 South Highway 17-92, Suite 101, Longwood, Florida 32750.

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.

CONCLUSIONS OF LAW

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

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

9. 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.

10. 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.

11. 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.

12. Respondent is an existing motor vehicle dealer who has standing to file a protest of the proposed new dealership in this case.

13. 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.

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

15. 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 Transportation enter a final order denying the establishment of Petitioners' proposed franchise.

DONE AND ENTERED this 14th day of January, 2009, in
Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
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 14th day of January, 2009.

COPIES FURNISHED:

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

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

Michael J. Alderman, Esquire
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Room A-432
2900 Apalachee Parkway
Tallahassee, Florida 32399-0635

David Levison
Mega Power Sports, Corp.
921 West International Speedway Boulevard
Daytona Beach, Florida 32114

David Levison
Mega Powersports Corp.
390 North Beach Street
Daytona Beach, Florida 32114

Leo Su
Galaxy Powersports, LLC, d/b/a
JCL International, LLC
2667 Northhaven Road
Dallas, Texas 75229

James Sursely
Action Orlando Motorsports
306 West Main Street
Apopka, Florida 32712

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.