

**STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
DIVISION OF MOTOR VEHICLES**

FINAL ORDER NUMBER: **HSMV-09-1765-FOI-DMV**

MOTORSPORTS OF DELRAY, LLC,

Petitioner,

Case No.: DMV-09-0935

v.

DOAH Case No.: 09-2129

YAMAHA MOTOR CORPORATION, U.S.A.,

Respondent.

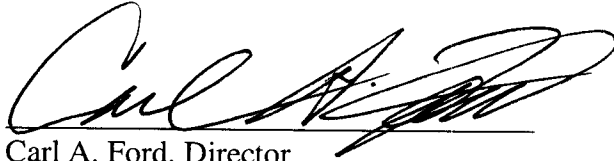
FINAL ORDER

This matter is before the Department for entry of a Final Order upon submission of the Recommended Order dated December 8, 2009 by William L. Camper, Hearing Officer of the Department of Highway Safety and Motor Vehicles. The Department hereby adopts the Recommended Order as its Final Order in this matter. A copy of the Recommended Order is attached and is incorporated by reference in this order.

Accordingly, it is

ORDERED and **ADJUDGED** that Respondent's, Yamaha Motor Corporation USA's Motion for Order determining that section 320.64(36)(1) does not apply to the dealer agreement between the parties and that Petitioner, Motorsports of Delray, LLC, has no right of recovery as requested under the statute respecting the repurchase of property upon the termination of a franchise is **GRANTED**.

DONE AND ORDERED this 9th day of December 2009, at Tallahassee, Leon
County, Florida.



Carl A. Ford, Director
Division of Motor Vehicles
Department of Highway Safety and
Motor Vehicles
Neil Kirkman Building, Room B439, MS-60
Tallahassee, Florida 32399-0600

Filed in the official records of the
Division of Motor Vehicles
this 10th day of December 2009.


Nalini Vinayak, Dealer License Administrator

NOTICE OF APPEAL RIGHTS

Judicial review of this order may be had pursuant to section 120.68, Florida Statutes, in the District Court of Appeal for the First District, State of Florida, or in any other district court of appeal of this state in an appellate district where a party resides. In order to initiate such review, one copy of the notice of appeal must be filed with the Department and the other copy of the notice of appeal, together with the filing fee, must be filed with the court within thirty days of the filing date of this order as set out above, pursuant to Rule 9.110, Rules of Appellate Procedure.

CAF:jdc

Copies furnished:

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STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
DIVISION OF MOTOR VEHICLES

MOTORSPORTS OF DELRAY, LLC,

Petitioner,

v.

Case No.: DMV-09-0935

DOAH Case No.: 09-2129

YAMAHA MOTOR CORPORATION, U.S.A.,

Respondent.

RECOMMENDED ORDER

Based on an Order Relinquishing Jurisdiction filed by the Division of Administrative Hearings, Department Administrative Hearing Officer, William L. Camper, conducted a section 120.57(2), Florida Statutes proceeding in November 2009, without the necessity of a live hearing, pursuant to a Joint Motion for Informal Hearing filed by the parties.

STATEMENT OF THE ISSUES

The issue presented is whether provisions of 320.64(36)(a), Florida Statutes (2008) should be applied retroactively so as to alter the terms of a franchise agreement entered into prior to the enactment of section 320.64(36)(a).

PRELIMINARY STATEMENT

On April 21, 2009, Delray filed a request for an administrative hearing, asserting that Yamaha was required by section 320.64(36), Florida Statutes, to repurchase certain parts from Delray. The Department forwarded Delray's hearing request to the Division of Administrative Hearings. On June 5, 2009, Yamaha filed a Motion for Order Determining that Section 320.64(36) Does Not Apply to the Dealer Agreement Between the Parties. On August 19, 2009, the Administrative Law Judge assigned to the case entered an order: i) granting Yamaha's

Motion, ii) finding that there are no disputed material facts; iii) ruling that the buyback provision in section 320.64(26), Florida Statutes, is prospective only; and iv) relinquishing jurisdiction to the Department pursuant to section 120.57(1)(i), Florida Statutes.

On September 3, 2009, Delray filed Petitioner's Exceptions to Order Relinquishing Jurisdiction. Pursuant to section 120.57(1)(i), Florida Statutes, when an Administrative Law Judge enters an order relinquishing jurisdiction to an agency, "the agency may promptly conduct a proceeding pursuant to [§ 120.57(2)], if appropriate." On September 10, 2009, the parties filed a Joint Motion for Informal Hearing and Scheduling Order. In the motion, the parties requested that an informal hearing be conducted on the basis of written submissions by the parties, and that Petitioner's Exceptions shall serve as Delray's brief for purposes of the hearing. Said motion further provided that the hearing be conducted on the basis of the pleadings in the matter below and written submissions to the Department by the parties and that a live hearing was not necessary. The motion further provided that Yamaha file a response with the Department no later than September 18, 2009, which it did.

UNDISPUTED MATERIAL FACTS AND ANALYSIS

The undisputed material facts and analysis as stated in the Administrative Law Judge's Order Relinquishing Jurisdiction are adopted herein and made a part of this Recommended Order.

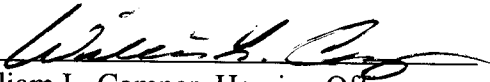
RECOMMENDATION

Based on the foregoing Material Facts and Conclusions of Law, it is

RECOMMENDED that the Department of Highway Safety and Motor Vehicles enter a final order granting Respondent's, Yamaha Motor Corporation USA, Motion for Order determining that section 320.64(36)(a) does not apply to the dealer agreement between the

parties and that Petitioner, Motorsports of Delray, LLC, has no right of recovery as requested under the statute respecting the repurchase of property upon the termination of a franchise.

DONE AND ORDERED this 8th day of December, 2009, in Tallahassee, Leon County, Florida.


William L. Camper, Hearing Officer
Division of Motor Vehicles
Department of Highway Safety and
Motor Vehicles
Neil Kirkman Building, Room A308
Tallahassee, Florida 32399-0600

Filed in the official records
of the Division of Motor Vehicles
this 8th day of December 2009.

CAF/jdc

Copies furnished:

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