

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RED STREAK SCOOTERS, LLC AND)
SCOOTER CITY USA, LLC,)
)
Petitioner,)
)
vs.) Case Nos. 09-3489
) 09-3499
JUDE A. MITCHELL, d/b/a JUDE'S)
CYCLE SERVICE,)
)
Respondent.)
)

CLASSIC MOTORCYCLES AND)
SIDE CARS, INC., AND SCOOTER)
CITY USA, LLC,)
)
Petitioners,)
)
vs.) Case No. 09-4750
)
JUDE A. MITCHELL, d/b/a JUDE'S)
CYCLE SERVICE,)
)
Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in these cases on October 13, 2009, in Orlando, Florida, before Jeff B. Clark, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearances

For Respondent: Jude A. Mitchell, pro se
Dennis H. Ruckel, pro se
Jude's Cycle Service
Post Office Box 585574
Orlando, Florida 32858

STATEMENT OF THE ISSUE

The issue is whether Petitioners are entitled to motor vehicle dealerships that are proposed to be located in Orange County, Florida.

PRELIMINARY STATEMENT

On June 12, 2009, Petitioner, Red Streak Scooters, LLC, and Scooter City USA, LLC, published a Notice of Publication for a New Point Franchise Motor Vehicle Dealer in a County of More Than 300,000 Population ("Notice of Publication"), Florida Administrative Weekly, Volume 35, Number 23, for two different locations in Orange County, Florida.

On June 21, 2009, Respondent, Jude A. Mitchell, d/b/a Jude's Cycle Service ("Respondent"), timely filed protests for each Notice of Publication with the Department of Highway Safety and Motor Vehicles ("Department").

By letter dated June 25, 2009, the Department referred the matters to the Division of Administrative Hearings ("DOAH") for assignment of an Administrative Law Judge to conduct a hearing "for the sole purpose of determining the propriety of the

protest[s] regarding issues specifically within the purview of Sections 320.642 and 320.699, Florida Statutes."

DOAH Case No. 09-3489 was assigned to the protest of the proposed dealership at 4535 34th Street, Orlando, Florida; and DOAH Case No. 09-3499 was assigned to the protest of the proposed dealership at 2650 West Fairbanks Avenue, Winter Park, Florida.

On June 25, 2009, Initial Orders were sent to all parties on both cases requesting mutually-convenient dates for a final hearing.

On July 7, 2009, the two related case were consolidated pursuant to Florida Administrative Code 28-106.108, and on July 22, 2009, a Notice of Hearing was issued scheduling the cases to be heard on October 13, 2009.

Thereafter, on August 7, 2009, Petitioner, Classic Motorcycles and Sidecars, Inc., and Scooter City USA, LLC, published a Notice of Publication, Florida Administrative Weekly, Volume 35, Number 31.

Respondent timely filed a protest with the Department on August 21, 2009. By letter dated August 28, 2009, the Department referred this matter to DOAH for an administrative hearing. This case was assigned DOAH Case No. 09-4750, and on September 1, 2009, an Initial Order was sent to all parties requesting mutually-convenient dates for a final hearing.

On September 15, 2009, Case Nos. 09-3489, 09-3499, and 09-4750 were consolidated, and on October 6, 2009, an Amended Notice of Hearing was issued scheduling all three cases to be heard on October 13, 2009.

Petitioners did not respond to the Order of Pre-hearing Instructions mailed on July 22, 2009. The hearing was convened as scheduled on October 13, 2009.

Jude A. Mitchell, representing Jude's Cycle Service, testified and presented the testimony of Dennis H. Ruckel. No exhibits were offered. No appearance was made on behalf of Petitioners.

The hearing was reported, but not transcribed.

All statutory references are to Florida Statutes (2009), unless otherwise noted.

FINDINGS OF FACT

Based on the Notices of Publication, Respondent's protest letters which were forwarded to DOAH, and the testimony presented at the final hearing, the following Findings of Fact are made:

1. Respondent is an existing franchised dealer for motorcycles manufactured by Benzhou Vehicle Industry Group Company, Ltd.

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

3. Respondent's dealership is located at 3838 John Young Parkway, Orlando, Orange County, Florida.

4. Petitioners' dealerships are proposed to be located in Orange County, Florida, at: 4535 34th Street, Orlando, Florida (Case No. 09-3489); and 2650 West Fairbanks Avenue, Winter Park, Florida (Case Nos. 09-3499 and 09-4750).

5. The proposed dealerships are within a 12.5-mile radius of Respondent's dealership.

6. Respondent has standing to protest the establishment of the proposed dealerships.

7. No evidence was presented showing that Respondent was "not providing adequate representation" of the same line-make vehicles in the community or territory.

CONCLUSIONS OF LAW

8. 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.

9. The Department is the agency responsible for regulating the licensing and franchising of motor vehicle dealers. §§ 320.60 through 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 Highway Safety and Motor Vehicles 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. 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.

12. Pursuant to Subsection 320.642(3)(b)1., 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 cases, 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 320.642(2)(a)1., Florida Statutes.

13. Respondent is an existing motor vehicle dealer who has standing to file a protest of the proposed new dealerships in these cases.

14. The burden is, therefore, on Petitioners to prove that there is "inadequate representation" in the community or territory of the proposed new dealerships according to the criteria set forth in Subsection 320.642(2)(b), Florida Statutes.

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

16. The approval sought by Petitioners must, therefore, be denied.

RECOMMENDATION

Based upon 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 franchise dealerships for Case Nos. 09-3489, 09-3499, and 09-4750.

DONE AND ENTERED this 12th day of November, 2009, in Tallahassee, Leon County, Florida.



JEFF B. CLARK
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 12th day of November, 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

Jennifer Clark
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Room A-308
2900 Apalachee Parkway
Tallahassee, Florida 32399-0635

Jude A. Mitchell
Jude's Cycle Service
Post Office Box 585574
Orlando, Florida 32858

Beverly Fox
Red Streak Scooters, LLC
427 Doughty Boulevard
Inwood, New York 11096

Randy Lazarus
Scooter City USA, LLC
4535 34th Street
Orlando, Florida 32811

Bobbette Lynott
Classic Motorcycles and Sidecars, Inc.
Post Office Box 969
Preston, Washington 98050

Lou Ronka
Scooter City USA, LLC
2650 West Fairbanks Avenue
Winter Park, Florida 32789

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.