

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EL SOL TRADING, INC. AND)
FISHERS AUCTION SERVICES, INC.,)
d/b/a FISHER AUTO EQUIPMENT)
SALES,)
)
Petitioners,) Case No. 09-6741
)
vs.)
)
CYCLES AND MORE, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On June 18, 2010, an administrative hearing in this case was conducted in New Smyrna Beach, Florida, before James H. Peterson, III, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners: (No appearance)

For Respondent: (No appearance)

STATEMENT OF THE ISSUE

The issue in the case is whether an application for a new point franchise motor vehicle dealership filed by El Sol Trading, Inc., and Fishers Auction Services, Inc., d/b/a Fisher Auto Equipment Sales (Petitioners), should be approved.

PRELIMINARY STATEMENT

By Notice published in the Florida Administrative Weekly (Volume 35, Number 45; November 13, 2009), the Department of Highway Safety and Motor Vehicles (Department) gave notice that El Sol Trading, Inc., was seeking to establish a new point franchise motor vehicle dealership for the sale of motorcycles manufactured by Shanghai Shenke Motorcycle Co., Ltd. (SHEN) with Fishers Auction Services, Inc., d/b/a Fisher Auto Equipment Sales, at 402 North Ridgewood Avenue, Edgewater (Volusia County), Florida 32132.

Cycles and More, Inc. (Respondent), filed a challenge to the establishment of the dealership. By letter dated December 11, 2009, the Department forwarded the challenge to DOAH. On December 15, 2009, DOAH issued an Initial Order, directing the parties to identify the anticipated length of the hearing, dates upon which the parties were available for hearing, and a suggested hearing location. No responses to the Initial Order were filed, and the hearing was to begin at 9:00 a.m., on June 18, 2010, in New Smyrna Beach as set forth in the Notice of Hearing filed January 4, 2010.

Neither party appeared at the time scheduled for commencement of the hearing. There were no witnesses or exhibits admitted into evidence. No transcript of the hearing was filed. No proposed recommended orders were filed.

FINDINGS OF FACT

1. There was no evidence presented at the hearing to establish that Respondent has a franchise agreement to sell or service SHEN motor vehicles, the line-make to be sold by Cycles and More, Inc.

2. There was no evidence presented at the hearing that Respondent's dealership is physically located so as to meet the statutory requirements for standing to protest the establishment of the new point franchise motor vehicle dealership.

CONCLUSIONS OF LAW

3. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2009).

4. Section 320.642, Florida Statutes (2009), provides in relevant part as follows:

320.642 Dealer licenses in areas previously served; procedure.--

(1) Any licensee who proposes to establish an additional motor vehicle dealership or permit the relocation of an existing dealer to a location within a community or territory where the same line-make vehicle is presently represented by a franchised motor vehicle dealer or dealers shall give written notice of its intention to the department. . . .

* * *

(2)(a) 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.

* * *

(3) An existing franchised motor vehicle dealer or dealers shall have standing to protest a proposed additional or relocated motor vehicle dealer when the existing motor vehicle dealer or dealers have a franchise agreement for the same line-make vehicle to be sold or serviced by the proposed additional or relocated motor vehicle dealer and are physically located so as to meet or satisfy any of the following requirements or conditions:

* * *

(b) If the proposed additional or relocated motor vehicle dealer is to be located in a county with a population of more than 300,000 according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:

1. Any existing motor vehicle dealer or dealers of the same line-make have a

licensed franchise location within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; or

2. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, such dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same county or any county contiguous to the county where the additional or relocated dealer is proposed to be located.

5. The licensees in this case are El Sol Trading, Inc., and Fishers Auction Services, Inc., d/b/a Fisher Auto Equipment Sales. See §§ 320.60(8) and 320.61, Fla. Stat. (2009).

6. Respondent is the alleged existing franchised motor vehicle dealer. Respondent failed to present any evidence at the hearing to establish that it meets the statutory requirements to establish standing, by location or sales volume, to protest the establishment of the new point franchise motor vehicle dealership at issue in this case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order dismissing the protest filed in this case by Cycles and More,

Inc., and granting Petitioners' request to establish a new point franchise motor vehicle dealership for the sale of SHEN motorcycles.

DONE AND ENTERED this 7th day of July, 2010, in Tallahassee, Leon County, Florida.



JAMES H. PETERSON, III
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 7th day of July, 2010.

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.