

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RECOVERY RACING, LLC, d/b/a  
MASERATI OF FORT LAUDERDALE,

Petitioner,

vs.

Case No. 14-2700

MASERATI NORTH AMERICA, INC.,  
AND RICK CASE WESTON, LLC, d/b/a  
RICK CASE MASERATI,

Respondents.

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RECOMMENDED ORDER

A hearing limited to the issue of standing was held in this matter on November 4 and 10, 2014, in Tallahassee, Florida, before Jessica Varn, an Administrative Law Judge assigned by the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner Recovery Racing, LLC, d/b/a Maserati of Fort Lauderdale (Recovery Racing):

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Maserati (Rick Case):

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STATEMENT OF THE ISSUE

Whether Petitioner has standing under section 320.642, Florida Statutes, to file a petition with the Department of Highway Safety and Motor Vehicles (Department) protesting the establishment of an additional dealership at a proposed location.

PRELIMINARY STATEMENT

On May 12, 2014, notice was published in the Administrative Register announcing Maserati's intent to establish an additional Maserati dealership, Rick Case, at a proposed location. Recovery Racing filed a Petition or Complaint Protesting

Establishment of Additional Dealership Protest with the Department (Protest). The Department forwarded the Protest to DOAH, and the case was assigned to the undersigned.

On September 4, 2014, Respondents filed a Joint Motion for Bifurcated and Expedited Hearing on Petitioner's Lack of Standing (Joint Motion), seeking the entry of an order bifurcating the Protest to provide for an expedited hearing limited to the issue of standing under section 320.642(3)(b)2. Recovery Racing opposed the Joint Motion; a telephone conference was held on September 18, 2014, wherein the parties were afforded the opportunity to further address the Joint Motion. On that same date, the undersigned entered an Order bifurcating the case. The hearing limited to the issue of standing was scheduled for November 4, 2014.

At the hearing limited to standing, Recovery Racing presented the expert testimony of Edward M. Stockton, who was accepted as an expert in the field of automotive retailing and economics, and the testimony of Garret Hayim, general manager and president of Recovery Racing. Petitioner's Exhibits 1, a Composite expert report, and 2 were admitted into evidence. A composite rebuttal exhibit, Petitioner's Exhibit 3, was also admitted into evidence.

Maserati presented the expert testimony of Sharif Farhat, who was accepted as an expert in add point matters.

Respondent's Exhibits A, B, and C were admitted into evidence. Recovery Racing objected to the admission of Respondent's Exhibit C; Exhibit C was admitted, but the hearing was reconvened on November 10, 2014, to allow Recovery Racing to prepare its rebuttal presentation in light of the admission of Exhibit C.

The Transcript of the hearing was filed with DOAH on November 18, 2014. Recovery Racing and Maserati timely filed proposed orders, which have been considered in the preparation of this Recommended Order. Unless otherwise indicated, all statutory references are to the Florida Statutes (2014).

FINDINGS OF FACT

1. As defined in section 320.60(11)(a), Recovery Racing is an existing motor vehicle dealer, and is a party to a Maserati franchise agreement. Recovery Racing sells Maserati vehicles from a licensed franchise located at 5750 North Federal Highway, Fort Lauderdale, Florida.

2. As defined in section 320.60(8), Maserati is a licensee.

3. Rick Case is the additional Maserati dealer that Maserati seeks to establish at 3500 Weston Road, Davie, Florida (proposed location).

4. The Proposed Location is approximately 18 miles from Recovery Racing's dealership located at 5750 North Federal Highway, Fort Lauderdale, Florida.

5. Recovery Racing is not within a radius of 12.5 miles of the proposed Rick Case location; accordingly, Recovery Racing is not claiming standing pursuant to section 320.642(3)(b)1. Recovery Racing relies on section 320.642(3)(b)2., to establish standing.

6. Mr. Stockton, the expert presented by Recovery Racing, opined that Recovery Racing has standing to protest because it made more than 25 percent of its retail sales to persons with registered household addresses within a 12.5 mile radius of the proposed location. Mr. Stockton's opinion is based on his assumption that "registered household address," as set forth in section 320.642(3)(b)2., means the address where the persons who use or drive the vehicle reside, regardless of the household addresses where the purchased vehicles are registered.

7. Mr. Stockton explained that in making his calculation, he did not rely on vehicle registration data; rather, he relied on the dealership sales files for each sale, and information provided to him by Mr. Hayim, the general manager for Recovery Racing.

8. Mr. Stockton's opinion on standing was also based on his definition of "retail sales" as set forth in

section 320.642(3)(b)2. According to Mr. Stockton, sales to businesses are included as retail sales where the business is an "instrument" of the transaction, and the person using the car is a "beneficiary." In contrast, he explained that a sale to a business is excluded as a retail sale when the business is the "beneficiary" of the transaction.

9. Turning to the time periods referenced in section 320.642(3)(b)2., Florida Administrative Code Rule 15C-7.004(9) sets forth the manner in which the 36-month period within which the 12-month period for standing is calculated. The period ends on the last day of the month preceding the month in which notice is published, running through the end of the month prior to the date of publication of the notice. Given the date of the notice in this case, which is May 12, 2014, the relevant period in the instant case ends on April 30, 2014, and begins 36 months before that date on May 1, 2011.

10. In calculating the time periods detailed in section 320.642(3)(b)2., Mr. Stockton was unaware of the Florida Administrative Code rule addressing the calculation of the 12-month period within a 36-month period. Accordingly, he began and ended his calculations mid-month, on May 19, 2011. He explained that there were approximately 730 possible 12-month periods to review; each one starting on a different day, going

forward 12 months. Mr. Stockton's method of reviewing the statutory time periods does not comply with the standards set forth in the Florida Administrative Code.

11. In making a standing calculation, the automotive industry calculates the percentage using the following fraction: the denominator is the total number of retail sales, and the numerator reflects the number of retail sales that are within the geographic radius required by the statute (referred to as "the ring").

12. The records attached to Mr. Stockton's reports, which are tabs 6 through 128 (although not consecutively numbered) in Exhibit 1, contain the documents that Mr. Stockton relied upon in making his standing calculation.

13. Mr. Stockton calculated the fraction at least two different times; both calculations were presented to the undersigned. The first calculations were reported as follows:

<b>Date range</b>	<b>Sales within ring</b>	<b>Nationwide sales</b>	<b>Percent within ring</b>
5/19/2011-5/18/2012	32	127	25.20%
5/20/2011-5/19/2012	32	127	25.20%
5/21/2011-5/20/2012	32	127	25.20%
5/22/2011-5/21/2012	32	126	25.40%
5/23/2011-5/22/2012	33	127	25.98%

14. Mr. Stockton's revised calculations, after receiving more information about some of the sales, were reported as follows:

<b>Date range</b>	<b>Sales within ring</b>	<b>Nationwide sales</b>	<b>Percent within ring</b>
5/19/2011-5/18/2012	34	127	26.77%
5/20/2011-5/19/2012	34	127	26.77%
5/21/2011-5/20/2012	34	127	26.77%
5/22/2011-5/21/2012	34	126	26.98%
5/23/2011-5/22/2012	35	127	27.56%

15. Sixteen of the sales included in the "sales within ring" (using either of the two reports detailed above) are not supported by any vehicle registration data. Those 16 sales are, as enumerated by the tabs attached to Mr. Stockton's report, the following: 18, 19, 24, 34, 37, 43, 51, 61, 68, 76, 109, 112, 117, 118, 119, and 122.

16. Interestingly, for two of the sales, tab 37 and tab 43, Mr. Stockton knew that the cars were registered in New Hampshire and Orlando, Florida, respectively. He included them, however, in the sales within the ring because he had knowledge that the vehicles were being used by persons with household addresses within the ring.

17. Mr. Stockton's method of reviewing the "end user" of a vehicle sale is wholly dependent on documents that vary from sales file to sales file and on information given to him by the general manager of the dealership. This methodology is subjective and easily manipulated by an interested party.

18. Mr. Stockton also included two sales, tabs 24 and 122, that were sold to non-retail buyers, who purchase the vehicle



wholesale. He included both because he had acquired information that the "end users" of the vehicles were persons with household addresses within the ring.

19. Maserati's expert, Mr. Farhat, opined that Recovery Racing did not have standing to protest because Recovery Racing did not meet the 25 percent requirement of retail sales within the 12.5 mile radius, within the time period mandated by the statute. Mr. Farhat's calculations were based on the assumption that the statutory term "registered household addresses" means the household addresses to which vehicles are registered with the Department. Given this assumption, he reviewed the vehicle registration data for each retail sale.

20. Mr. Farhat obtained the data from two authoritative sources in the automotive industry: Experian and IHS. Both of these entities obtain their vehicle registration data from state departments of motor vehicles.

21. Mr. Farhat defined the term "retail sale" as sales to individuals, and to businesses that purchase less than 10 vehicles in a year. He explained that this definition is used industry-wide.

22. Mr. Farhat ultimately opined that Recovery Racing never got close to reaching the 25 percent requirement, in any of the potential rolling 12-month periods in the preceding 36-months.

23. Mr. Farhat's testimony as to the definition of "registered household addresses" is found credible, as it gives meaning to all of the language contained in the statute. Mr. Stockton's definition is not supported by the statutory language, is unreliable, subject to manipulation, fails to give any meaning to the word "registered" as used in the statute, and inserts the term "end user" into the statute.

24. Mr. Farhat's testimony as to the definition of "retail sales" is also found credible, as it is an objective standard used by the automotive industry. Mr. Stockton's definition of "retail sales" is suspect in that it requires investigation into whether a business is a "beneficiary" or an "instrument"--again, information that is highly subjective and easily manipulated.

25. The plain meaning of the words "registered household addresses," as used in section 320.642(3)(b)2., is the household address to which a vehicle is registered with the Department. Given that 16 of the sales included in the ring by Mr. Stockton had no vehicle registration data, they cannot be included in the numerator. Two of those 16 sales were also not retail sales, as defined by the automotive industry.

26. Recovery Racing failed to meet its burden of proving that it has standing to protest the proposed Rick Case dealership location, as it did not establish that 25 percent of its retail sales, sold during the defined statutory timeframe,

were within the 12.5 mile radius set forth in section 320.642(3)(b)2.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over this proceeding pursuant to sections 120.569 and 320.699, Florida Statutes.

28. The standing provision applicable to this case is found in section 320.642(3)(b)2., which reads as follows:

(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 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:

\* \* \*

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. (emphasis added).

29. Recovery Racing bears the burden of establishing standing by a preponderance of the evidence. See Braman Cadillac v. Dep't of Highway Safety and Motor Vehicles, 584 So. 2d 1047, 1050 (Fla. 1st DCA 1991).

30. Turning first to the clause of the statute which addresses the time calculation, that is: "any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership," this clause is further explained in Florida Administrative Code Rule 15C-7.004(9). It provides that the period ends on the last day of the month preceding the month in which notice is published, running through the end of the month prior to the date of publication of the notice. Given the date of the notice in this case, which is May 12, 2014, the relevant period ends on April 30, 2014, and begins 36 months before that date on May 1, 2011. The rolling 12-month periods start at the beginning of each month in that 36-month span.

31. The central issue in this case is the definition of "registered household addresses" as used in the statute.

Petitioner's expert interpreted the words to mean the household address of the "end user" of the vehicle. This interpretation is rejected, as it ignores the plain meaning of the words used by the Legislature, gives no meaning to the word "registered" as used in the statute, and inexplicably inserts the term "end user" into the statute.

32. By its plain language, the term "registered household addresses" is not ambiguous. It means the household addresses where the purchased vehicle is registered. It is well settled that when the language of a statute is clear and unambiguous and conveys a clear meaning, the statute must be given its plain and ordinary meaning. See Aetna Casualty & Sur. Co. v. Huntington Nat'l Bank, 609 So. 2d 1315, 1315 (Fla. 1992); Holly v. Auld, 450 So. 2d 217 (Fla. 1984).

33. In addition, chapter 320 contains multiple references to vehicle registrations that demonstrate that the word "registered," as used in section 320.642(3)(b)2., is used in connection with household addresses where vehicles are registered with the Department. See § 320.01(31), Fla. Stat. (defining "registrant" as "a person in whose name or names a vehicle is properly registered"); § 320.02, Fla. Stat. (requiring that the application for vehicle registration include the street address of the owner's permanent residence or the address of his or her permanent place of business); § 320.08,

Fla. Stat. (imposing taxes which shall be paid to and collected by the Department or its agent upon the registration or renewal of a vehicle registration); and § 320.642(2)(b), Fla. Stat. (listing 11 factors in determining whether an existing dealer is providing adequate representation in a community, factor (11) is the volume of registrations and service business transacted by the dealer.).

34. Recovery Racing's interpretation of "registered household addresses" would also impose an unworkable burden on the industry in determining which dealers have standing to protest a proposed dealership. It would require that each sales file be investigated so as to determine the "end user" of the vehicle. This interpretation lends itself to manipulation by an interested dealer and is subjective in nature. Vehicle registration data, on the other hand, is accessible to all existing dealers, potential dealers, and manufacturers alike, so that all interested parties can make an efficient, predictable calculation to determine standing.

35. Recovery Racing provided data for five rolling 12-month periods beginning on May 19, 2011. In its supporting data, 16 sales did not contain vehicle registrations; therefore, they cannot be included in the numerator.

36. Recovery Racing has failed to prove, by a preponderance of the evidence, that it satisfied the 25 percent test in section 320.642(3)(b)2.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order dismissing Recovery Racing's protest of the proposed establishment of an additional dealer for lack of standing.

DONE AND ENTERED this 17th day of December, 2014, in Tallahassee, Leon County, Florida.



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JESSICA E. VARN  
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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.