

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NAVITAS FINANCIAL GROUP, INC.,
d/b/a POMPANO PATS DELAND,

Petitioner,

vs.

Case No. 14-4197

PEACE INDUSTRY GROUP (USA),
INC., AND WILD HOGS SCOOTERS AND
MOTORSPORTS, LLC,

Respondents.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on December 19, 2014, in Tallahassee, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

For Respondent: G. Michael Smith, Esquire
Smith Collins, LLC
8565 Dunwoody Place, Building 15
Atlanta, Georgia 30350

STATEMENT OF THE ISSUE

The issue in this case is whether Respondents' application to establish a dealership to sell motorcycles manufactured by Chongqing Astronautical Bashan Motorcycle Manufacturer Co., Ltd. (BASH line-make), should be approved.

PRELIMINARY STATEMENT

On or about August 29, 2014, a notice was published in the Florida Administrative Register (FAR) indicating the desire of Respondent to establish a dealership to sell BASH line-make motorcycles in Volusia County, Florida. Petitioner filed a protest against the proposed dealership dated August 21, 2014. The matter was referred to the Division of Administrative Hearings (DOAH) and assigned to the undersigned Administrative Law Judge. Pursuant to notice, a final hearing was scheduled for December 19, 2014. On December 16, 2014, Petitioner filed a motion seeking a continuance of the final hearing. The motion did not state the existence of an emergency and no good cause was shown for a continuance. See Fla. Admin Code R. 28-106.210. The motion was denied.

At the final hearing, held as originally noticed, Petitioner did not make an appearance. Respondent did not call any witnesses but offered Exhibits 1-6 into evidence, each of which was admitted.

The transcript of the final hearing was not ordered. By rule, the parties are allowed up to ten days following the final hearing to submit a proposed recommended order. As of this date, neither Petitioner nor Respondent has filed a proposed recommended order.

FINDINGS OF FACT

1. Petitioner filed an "Official Notice of Protest - Petition for Determination" dated August 21, 2014, with the Florida Department of Highway Safety and Motor Vehicles (HSMV). The protest/petition opposes Respondent's noticed intention to establish a dealership to be called Wild Hogs Scooters and Motorsports, LLC, at 1431 South Woodland Boulevard, Deland (Volusia County), Florida. Notice of that intent was duly published in the Florida Administrative Register on August 29, 2014. (There was no explanation provided as to why Petitioner's protest/petition was filed before the publication of the notice.)

2. Petitioner's protest/petition asserts that Respondent's proposed new dealership will be located "within our territory." Petitioner further asserts that Peace Industry Group is its "number two supplier of scooters, and represents 38% of our scooter sales." Petitioner did not appear at final hearing or present any competent evidence to support these allegations.

3. Respondent provided evidence suggesting that Petitioner has only purchased seven motor-scooters from Peace Industry Group.

4. Petitioner did not appear at final hearing and present evidence as to its "standing to protest" as required by section 320.642(3), Florida Statutes. (Unless specifically stated

otherwise herein, all references to Florida Statutes will be to the 2014 version.)

5. Conversely, Respondent presented evidence that Petitioner's dealership in Deland, Florida, has closed and gone out of business. This unrefuted evidence proves that Petitioner no longer has standing to protest Respondent's proposed new dealership in the area.

6. The propriety of Petitioner's protest is the only issue in this proceeding. A petitioner without standing cannot pursue such a challenge.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

8. This matter was transferred to DOAH from HSMV "for the sole purpose of determining the propriety of the protest by Petitioner regarding issues specifically within the purview of sections 320.642 and 320.699, Florida Statutes." (See letter from Dealer License Section Administrator dated September 12, 2014.)

9. Section 320.699 addresses the process for obtaining an administrative hearing and states, in pertinent part:

- (1) A motor vehicle dealer, or person with entitlements to or in a motor vehicle dealer, who is directly and adversely affected by the

action or conduct of an applicant or licensee which is alleged to be in violation of any provision of ss. 320.60-320.70, may seek a declaration and adjudication of its rights with respect to the alleged action or conduct of the applicant or licensee by:

(a) Filing with the department a request for a proceeding and an administrative hearing which conforms substantially with the requirements of ss. 120.569 and 120.57; or

(b) Filing with the department a written objection or notice of protest pursuant to s. 320.642.

10. Section 320.642 sets forth the process for establishing a new motor vehicle dealership. That section states in pertinent part:

(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. The notice must state:

(a) The specific location at which the additional or relocated motor vehicle dealership will be established.

(b) The date on or after which the licensee intends to be engaged in business with the additional or relocated motor vehicle dealer at the proposed location.

(c) The identity of all motor vehicle dealers who are franchised to sell the same line-make vehicle with licensed locations in the county and any contiguous county to the county where the additional or relocated

motor vehicle dealer is proposed to be located.

(d) The names and addresses of the dealer-operator and principal investors in the proposed additional or relocated motor vehicle dealership.

Immediately upon receipt of the notice the department shall cause a notice to be published in the Florida Administrative Weekly. The published notice must state that a petition or complaint by any dealer with standing to protest pursuant to subsection (3) must be filed within 30 days following the date of publication of the notice in the Florida Administrative Weekly. The published notice must describe and identify the proposed dealership sought to be licensed, and the department shall cause a copy of the notice to be mailed to those dealers identified in the licensee's notice under paragraph (c). The licensee shall pay a fee of \$75 and a service charge of \$2.50 for each publication. Proceeds from the fee and service charge shall be deposited into the Highway Safety Operating Trust Fund.

11. Florida Statutes clearly require a proposed licensee to identify all currently franchised dealers. Those dealers with standing to protest are required to file a complaint within 30 days of the FAW notice. In this case, there is no evidence that Petitioner was a licensed, franchised dealer at the time Respondent's notice was filed in the FAR. Therefore, Petitioner has not established its standing to protest the proposed dealership.

12. The remainder of section 320.642, (specifically subsection (2) (b)1.-11.) addresses the determination of whether

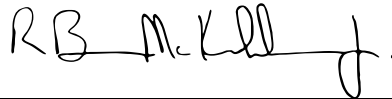
existing franchised dealers are providing adequate representation in the community for the line-make at issue. Inasmuch as Petitioner has not proved its standing to file a protest, that portion of the statute is not relevant to this case. Respondent did not address the elements in subsection 320.642(2)(b)1. through 11. However, in light of Petitioner's lack of jurisdiction to protest the proposed dealership, Respondent did not have a burden to prove or address those elements.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Department of Highway Safety and Motor Vehicles denying Petitioner, Navitas Financial Group, Inc., d/b/a Pompano Pats Deland's protest of Respondent's proposed new dealership.

DONE AND ENTERED this 12th day of January, 2015, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
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Filed with the Clerk of the
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this 12th day of January, 2015.

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.