

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IMOTORSPORTS SBP, LLC d/b/a ST.
PETE POWERSPORTS,

Petitioner,

vs.

Case No. 19-2718

WEST COAST OUTDOOR SPORTS, LLC
d/b/a GABLES MOTORSPORTS WESLEY
CHAPEL AND VANDERHALL MOTOR
WORKS, INC.,

Respondents.

_____ /

RECOMMENDED ORDER

On October 8, 2019, Administrative Law Judge Hetal Desai of the Division of Administrative Hearings (DOAH) held a final hearing by video teleconference at locations in Tallahassee and St. Petersburg, Florida.

APPEARANCES

For Petitioner: Haider Saba, pro Se
IMotorsports SBP, LLC
555 34th Street, South
St. Petersburg, Florida 35711

For Respondents: Jeff Whaley, VP of Sales and Operations
Corporate Representative
Vanderhall Motor Works, Inc.
3500 Mountain Vista Parkway
Provo, Utah 84606

Nigel Bailey, pro se
West Coast Outdoor Sports, LLC
28009 Wesley Chapel Boulevard
Wesley Chapel, Florida 33543-3202

STATEMENT OF THE ISSUES

The issues in this case are whether Petitioner has standing to protest the establishment of an additional motorcycle dealership; and, if so, whether Petitioner is adequately representing this line of vehicles in the relevant territory or community pursuant to section 320.642, Florida Statutes (2019).^{1/}

PRELIMINARY STATEMENT

On April 30, 2019, the Department of Highway Safety and Motor Vehicles (the Department) published notice in the Florida Administrative Register (Volume 45, Number 84, p. 1867) of its intent to allow Respondent West Coast Outdoor Sports, LLC d/b/a Gables Motorsports Wesley Chapel (Gables Motorsports) to serve as a dealership for the sale of motor vehicles manufactured by Respondent Vanderhall Motor Works, Inc. (Vanderhall).^{2/} On May 15, 2019, Petitioner iMotorsports SBP, LLC d/b/a St. Pete Powersports (iMotorsports) filed a complaint protesting Respondents' application and the Department's intention to grant the application.

The Department referred the matter to DOAH on May 21, 2019, and requested a formal hearing. The undersigned issued an Initial Order requesting the parties provide, among other information, dates and venue preferences for the hearing. None of the parties submitted a response to the Initial Order, and the matter was set for hearing.

A pre-hearing telephone conference was noticed and set for October 1, 2019. None of the parties called in for that pre-hearing conference.

At the hearing, Petitioner appeared and offered the testimony of its owner, Haider Saba, but it did not offer any exhibits. Respondent Gables Motorsports offered the testimony of its owner, Nigel Bailey, but did not offer any exhibits. Respondent Vanderhall offered the testimony of Jeffrey Whaley, the Vice President of Sales and Operations. Vanderhall offered without objection Exhibits 1, 2, 3A, and 3B, all of which were admitted into evidence.

At the conclusion of the final hearing, Vanderhall indicated it intended to order the transcript of the hearing. The Transcript was filed on November 18, 2019. Respondent Vanderhall filed an untimely Proposed Recommended Order (PRO) on December 4, 2019, which has been reviewed, but not considered. Neither Petitioner nor Respondent Gables Motorsports filed a PRO.

FINDINGS OF FACT

1. iMotorsports is located in Pinellas County. No evidence was provided regarding its address or location. The parties stipulated, however, that iMotorsports is located 45.9 miles from Gables Motorsports, and is outside of a 12.5 mile radius of the proposed dealership, Gables Motorsports.

2. Gables Motorsports is located in Pasco County, Florida at 28009 Wesley Chapel Boulevard, Wesley Chapel, Florida 33543.

3. According to the U.S. Census Bureau and University of Florida, Bureau of Economic Research, the population of Pasco County, Florida, was 464,697 as of April 1, 2010. The estimated population as of April 1, 2018, for this same area was 515,077.

4. Vanderhall manufactures "autocycles" or two-passenger, three-wheeled motor vehicles and sells them nationally. At the time of the hearing there were eight to ten dealerships distributing the Vanderhall autocycles in Florida, and there were 55 Vanderhall dealerships or distributors nationwide. In these proceedings, Vanderhall seeks to allow Gables Motorsports to serve as a dealership to sell and service the Vanderhall autocycles.

5. Although no franchise agreement was offered into evidence, based on Mr. Saba's testimony, the undersigned finds in June or July 2018, iMotorsports entered into an agreement with Vanderhall to sell its autocycles.

6. According to the documentation offered by Vanderhall, iMotorsports has sold 15 Vanderhall autocycles since it became a Vanderhall dealership, approximately 14 months ago. None of those sales were to households within a 12.5 mile radius of the proposed dealership at Gables Motorsports.

7. Mr. Saba agreed iMotorsports had not had any sales to households in the 12.5 mile radius around Gables Motorsports, but argued at the hearing that verbal promises were made by Vanderhall that it would not establish any other Vanderhall dealerships in Florida.

Ultimate Findings Regarding Standing

8. iMotorsports is an existing dealership that sells Vanderhall autocycles.

9. iMotorsports is not within a 12.5 mile radius of the proposed dealership at Gables Motorsports.

10. iMotorsports has failed to establish that during the 12-month period preceding the filing of the application for the proposed dealership by Gables Motorsports and Vanderhall, iMotorsports or its predecessor made 25 percent of its retail sales of the Vanderhall autocycles to registered household addresses within a 12.5 mile radius of Gables Motorsports.

11. Therefore, iMotorsports does not have standing to bring this challenge pursuant to section 320.642(3).

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over this proceeding pursuant to sections 120.569, 120.57(1), 320.642, and 320.699, Florida Statutes.

13. The Department is the agency responsible for regulating the licensing and franchising of motor vehicle dealers.

§§ 320.60-320.70, Fla. Stat.

14. The purpose of these regulations is "to prevent powerful manufacturers from taking unfair advantage of their dealers by overloading a market area with more dealers than can be justified by the legitimate interests of the manufacturer and its dealers, existing and prospective." Bill Kelley Chevrolet, Inc. v. Calvin, 322 So. 2d 50, 52 (Fla. 1st DCA 1975). As such, section 320.642 requires a determination as to "whether an additional (either new or relocated) dealership is justified, economically and otherwise, from the viewpoints of the existing dealers and the public, respectively." Gen. Motors Corp. v. Fla. Dep't of High. Saf. & Motor Veh., 625 So. 2d 76, 78 (Fla. 1st DCA 1993).

15. As explained in section 320.642(2)(a), a challenge to a motor vehicle dealership application involves a two-part analysis: (1) the challenger's standing; and (2) the adequacy of existing representation of the same vehicle line.

16. Standing is further addressed in section 320.642(3), which provides in relevant part:

(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. (emphasis added)

17. iMotorsports (as the "existing franchised motor vehicle dealer") has the initial burden of establishing standing by a preponderance of the evidence. See Recovery Racing, LLC v. State

Dep't of High. Saf. & Motor Veh., 192 So. 3d 665, 669 n.1 (Fla. 4th DCA 2016)(noting plain language of statute places the burden "squarely on the existing dealer" to show its standing).

18. If standing is established, the burden shifts to Respondents Gables Motorsports and Vanderhall (as the applicants for the new dealer license) to establish by a preponderance of the evidence that iMotorsports (as the existing Vanderhall dealer) is not providing adequate representation of the Vanderhall autocycles. See § 320.642(2), Fla. Stat. (explaining "[t]he burden of proof in establishing inadequate representation shall be on the licensee" and requiring a determination regarding the adequacy of existing representation to be based on evidence directed to 11 enumerated issues).

19. Here, regarding the first part of the analysis, iMotorsports has failed to meet its burden of establishing standing. Therefore, the burden to show a new dealership was "justified" never shifted to Respondents.

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 finding iMotorsports lacks standing, and dismissing iMotorsports' challenge of the Respondents' new dealership application for the sale of Vanderhall vehicles at Gables Motorsports.

DONE AND ENTERED this 10th day of December, 2019, in
Tallahassee, Leon County, Florida.



HETAL DESAI
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 10th day of December, 2019.

ENDNOTES

^{1/} Unless specifically stated otherwise, all statutory and regulatory references are to the 2019 versions of the Florida Statutes and Florida Administrative Code.

^{2/} Pursuant to section 90.202(5), Florida Statutes, the undersigned takes official recognition of the notice published in the Florida Administrative Register, which was provided by the Department with the referral to DOAH.

COPIES FURNISHED:

Joseph R. Gillespie, Agency Clerk
Department of Highway Safety
and Motor Vehicles
Room A432, Mail Stop 2
2900 Apalachee Parkway
Tallahassee, Florida 32399-0500
(eServed)

Nigel Bailey
West Coast Outdoor Sports, LLC
28009 Wesley Chapel Boulevard
Wesley Chapel, Florida 33543-3202

Teresa Shepherd
Vanderhall Motor Works, Inc.
3500 Mountain Vista Parkway
Provo, Utah 84606
(eServed)

Timothy Walter
iMotorsports SBP, LLC
334 West Grand Avenue
Elmhurst, Illinois 60126-1127
(eServed)

Timothy Walter
iMotorsports SBP, LLC
555 34th Street, South
St. Petersburg, Florida 33711-1719

Jeffrey Whaley, VP of Sales and Operations
Vanderhall Motor Works, Inc.
3500 Mountain Vista Parkway
Provo, Utah 84606
(eServed)

Haider Saba
iMotorsports SPB, LLC
555 34th Street South
St. Petersburg, Florida 33711
(eServed)

Robert Kynoch, Director
Division of Motorist Services
Highway Safety and Motor Vehicles
Neil Kirkman Building, Room B-435
2900 Apalachee Parkway
Tallahassee, Florida 32399-0635
(eServed)

Christie S. Utt, General Counsel
Highway Safety and Motor Vehicles
Neil Kirkman Building, Room A-432
2900 Apalachee Parkway
Tallahassee, Florida 32399-0500
(eServed)

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.