ALM GL ch. 93B, § 1

Current through Chapter 116 of the 2022 Legislative Session of the 192nd General Court

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§ 1. Definitions.

As used in this chapter the following words shall have the following meanings:

"Boundary", the property line of the address of the principal new motor vehicle sales facility approved by the manufacturer or distributor in the franchise agreement and utilized by a dealership of a specific line make; or in the case of a proposed new location, the property line of the address of the principal new motor vehicle sales facility that is intended to be used by the proposed new person or the relocating existing dealer.

"Dealer", "motor vehicle dealer" or "dealership", any person who, in the ordinary course of its business, is engaged in the business of selling new motor vehicles to consumers or other end users pursuant to a franchise agreement and who has obtained a class 1 license pursuant to the provisions of section 58 and 59 of chapter 140. It shall not include: (1) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree or order of any court, or (2) public officers while performing their duties as such officers.

"Distributor", any person who is not a manufacturer or a motor vehicle dealer, and who sells or distributes new and unused motor vehicles to motor vehicle dealers within the commonwealth or to any wholesaler who in turn sells or distributes such vehicles to motor vehicle dealers within the commonwealth; or any branch office or division maintained by any of such persons for directing and supervising their franchisor representatives.

"Dual" or "dualing", a motor vehicle dealer occupying and conducting business operations for one line make of new motor vehicles which is located in the dealership facilities described in the franchise agreement as dedicated, wholly or in part, to the operations governed by the franchise agreement, and from which it conducts its business operations for another line make of new motor vehicles.

"Former franchisee", a dealer that has either: (i) entered into a termination agreement or a deferred termination agreement with a predecessor or successor manufacturer related to the franchise; or (ii) had the franchise canceled, terminated, nonrenewed, noncontinued, rejected, nonassumed or otherwise ended by the predecessor or successor manufacturer.

"Franchise" or "franchise agreement", an oral or written arrangement for a definite or indefinite period in which a manufacturer or distributor grants to a motor vehicle dealer a license to use a trade name, service mark, or related characteristic, and in which there is a community of interest in the marketing of new motor vehicles or services related thereto at wholesale, retail, leasing, or otherwise.

"Franchisor representative", a person employed by a manufacturer or distributor for the purpose of promoting the sale of new motor vehicles or for supervising, servicing, instructing or contracting motor vehicle dealers or prospective motor vehicle dealers; and any officer, agent or other authorized representative of a manufacturer or distributor.

"Line make", a collection of models, series or groups of motor vehicles manufactured by or for a particular manufacturer, distributor or importer that is offered for sale, lease or distribution under a

common brand name or mark; provided, however, that: (i) multiple brand names or marks may constitute a single line make, but only when included in a common dealer agreement and the manufacturer, distributor or importer offers such vehicles bearing the multiple names or marks together only, and not separately, to its authorized dealers; and (ii) motor vehicles that share a common brand name or mark may constitute separate line makes when such vehicles are of different vehicle types or are intended for different types of use, provided that either: (i) the manufacturer has expressly defined or covered the line makes of vehicles as separate and distinct line makes in the applicable dealer agreements; or (ii) the manufacturer has consistently characterized the vehicles as constituting separate and distinct line makes to its dealer networks.

“Manufacturer”, any person engaged in the business of manufacturing or assembling new and unused motor vehicles; any person holding majority ownership in any person encompassed within this definition of the term “manufacturer”; or any branch office or division maintained by the person for directing and supervising a franchisor representative.

“Motor vehicle”, any motor driven vehicle or house trailer required to be registered under chapter 90 regardless of curb weight or required to be registered under sections 20 to 35, inclusive, of chapter 90B having a curb weight of not more than 1,000 pounds, or a truck camper.

“New motor vehicle”, a motor vehicle which has not been previously sold to any person except a manufacturer, distributor or motor vehicle dealer for resale.

“Person”, a natural person, corporation, partnership, limited liability company, limited liability partnership, trust or other entity.

“Powersport vehicle”, any motor vehicle defined as a motorcycle or motorized bicycle by section 1 of chapter 90 and required to be registered under chapter 90 regardless of curb weight or any motor vehicle required to be registered under sections 20 to 35, inclusive, of chapter 90B having a curb weight of not more than 1,000 pounds.

“Recreational vehicle”, a motor vehicle defined as an auto home or house trailer by section 1 of chapter 90 and required to be registered under chapter 90, or a truck camper.

“Relevant market area”, the geographic area surrounding the boundary of a dealership, determined as follows:

(1) If all boundaries of a dealership located in the counties of Bristol, Essex, Hampden, Middlesex, Norfolk, Plymouth or Suffolk are 8 or more miles from the border of the counties of Barnstable, Berkshire, Dukes, Franklin, Hampshire, Nantucket and Worcester, then the geographic area shall be the entire land mass encompassed in a circle with a radius of 8 miles from any boundary of the dealership.

(2) If all boundaries of a dealership located in the counties of Barnstable, Berkshire, Dukes, Franklin, Hampshire, Nantucket or Worcester are 14 or more miles from the border of the counties of Bristol, Essex, Hampden, Middlesex, Norfolk, Plymouth and Suffolk, then the geographic area shall be the entire land mass encompassed in a circle with a radius of 14 miles from any boundary of the dealership.

(3) For all dealerships in the commonwealth which are not included within paragraphs (1) or (2), inclusive, of this definition, the geographic area shall be a land mass comprised of circular arc segments with a radius of 8 miles from any boundary of the dealership for the arc segments that fall within the counties of Bristol, Essex, Hampden, Middlesex, Norfolk, Plymouth and Suffolk; and with a radius of 14 miles from any boundary of the dealership for the arc segments that fall within the counties of Barnstable, Berkshire, Dukes, Franklin, Hampshire, Nantucket and Worcester.

(4) For any motor vehicle dealer who deals in whole or in part in powersport vehicles, notwithstanding subparagraphs (1), (2) and (3), the geographic area shall be the entire land mass encompassed in a circle with a radius of 20 miles from any boundary of the dealership for that part of the dealership which deals in said powersport vehicles.

(5) For any motor vehicle dealer who deals in whole or in part in recreational vehicles, notwithstanding subparagraphs (1), (2), (3) and (4), the geographic area shall be the greater of the entire land mass encompassed in a circle with a radius of 25 miles from any boundary of the dealership or the area of responsibility of the dealer as defined in the franchise agreement or the combination of the 25 miles boundary and the area of responsibility for that part of the dealership which deals in recreational vehicles.

(6) For the purposes of this chapter, a radius measurement shall be drawn from the closest boundary of the existing dealership to the closest boundary of the site for the proposed dealership or relocation.

"Sale" or "sell", the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, or lease of any motor vehicle or interest therein or of any franchise related thereto; and any option, subscription or other contract, or solicitation, looking to a sale, offer or attempt to sell, or lease in any form, whether spoken or written. The delivery or gift, for any purpose including as a bonus, of a motor vehicle or franchise interest, shall be considered a sale of the motor vehicle or franchise interest.

History

2002, 222, § 3; 2012, 152, §§ 1, 2.

Annotations

Notes

Codification

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Amendment Notes

The 2012 amendment, effective Oct 16, 2012, by § 1, added the definition of "'Former franchisee'" and by § 2, added the definition of "'Line make'."

Notes to Decisions

I. UNDER CURRENT LAW

1. In general

Where entrepreneurs were director and officers of a corporation that operated a motor vehicle dealership which was making automobile sales to the public, the entrepreneurs were only in the most colloquial sense, as individuals, the sellers of the product; the judge was correct in ruling that the individual entrepreneurs did not have standing to assert claims as a motor vehicle dealer, under ALM GL c 93B, § 1(1). Davidson v. GMC, 57 Mass. App. Ct. 637, 786 N.E.2d 845, 2003 Mass. App. LEXIS 363 (Mass. App. Ct. 2003).

It is reasonably clear that the Massachusetts Supreme Judicial Court would reject personal standing under the Massachusetts Dealers' Bill of Rights, ALM GL c 93B, § 1 et seq., based on the York exception alone as that exception rests on the notion that the corporation and the individual owner/operator can become so intertwined as to properly be considered a single entity, justifying disregard of the corporate form and yet the majority of courts to address the issue reject this approach. Bishay v. Am. Isuzu Motors, Inc., 404 F.3d 491, 2005 U.S. App. LEXIS 5616 (1st Cir. Mass. 2005).

II. UNDER FORMER LAW

2. In general

Term "motor vehicle" as used in ALM GL c 93B, § 1(a), and wherever that term otherwise appears in that chapter, is defined as shown in ALM GL c 90, § 1. Hein-Werner Corp. v. Jackson Indus., Inc., 364 Mass. 523, 306 N.E.2d 440, 1974 Mass. LEXIS 589 (Mass. 1974).

Lawn, garden, and ground maintenance equipment, including tractors and utility vehicles, intended to care for lawns and yards and to perform landscaping and garden functions are not motor vehicles designed for regular use in transportation of persons and property on traveled part of public highways. Deere & Co. v. Ford, 434 Mass. 223, 747 N.E.2d 1208, 2001 Mass. LEXIS 221 (Mass. 2001).

ALM GL c 93B, § 4(3)(i), requiring manufacturers not to unreasonably withhold consent to transfer of dealership, and ALM GL c 93B, § 4(3)(l), prohibiting manufacturers from arbitrarily granting new dealership in or consenting to relocation of dealership to area within relevant market area of existing dealership, may overlap but are not contradictory. Heritage Jeep-Eagle v. Chrysler Corp., 39 Mass. App. Ct. 254, 655 N.E.2d 140, 1995 Mass. App. LEXIS 787 (Mass. App. Ct. 1995).

Unlike Automobile Dealers' Day in Court Act (ADDCA), ALM GL c 93B does not define "bad faith" or "good cause", and thus, court, in determining "bad faith" under ALM GL c 93B, is not bound by same restrictions as under ADDCA; bad faith may encompass broader conduct under ALM GL c 93B than mere coercion or intimidation. General GMC, Inc. v. Volvo White Truck Corp., 918 F.2d 306, 1990 U.S. App. LEXIS 19773 (1st Cir. Mass. 1990).

In action under ALM GL c 93B, § 4, for termination of franchise, question of material fact existed making summary judgment inappropriate as to whether defendants acted in bad faith within meaning of ALM GL c 93B, § 4. General GMC, Inc. v. Volvo White Truck Corp., 918 F.2d 306, 1990 U.S. App. LEXIS 19773 (1st Cir. Mass. 1990).

Individual lacked independent standing to pursue a claim under ALM GL c 93B, § 1 et seq., after a Chapter 7 bankruptcy trustee for two auto dealerships had settled all claims against an auto manufacturer where the dealerships had been incorporated and under the general rule of corporate law, only the corporation, a receiver, or a stockholder suing derivatively in the corporation's name could seek redress for an injury, the Kavanaugh exception to the general rule, which recognized individual standing under the Automobile Dealers' Day in Court Act (ADDCA), 15 USCS § 1221 et seq., when the dealership was unable or unwilling to bring suit against the manufacturer, was inapplicable as the dealerships had not faced any impediment to suit, and the Massachusetts Supreme Judicial Court would have rejected personal standing based on the York exception, which rested on the alter-ego theory, given that a majority of courts had rejected that approach under the ADDCA. Bishay v. Am. Isuzu Motors, Inc., 404 F.3d 491, 2005 U.S. App. LEXIS 5616 (1st Cir. Mass. 2005).

Research References & Practice Aids

Research References and Practice Aids

Web References

Commonwealth Corporation, see www.commcorp.org/

Office of Business Development, see www.mass.gov/hed/economic/eohed/bd/

Office of Consumer Affairs and Business Regulation, see www.mass.gov/ocabr/

Office of International Trade and Investment, see www.mass.gov/hed/economic/eohed/moiti/index.html

State Office of Minority and Women Business Assistance, see www.somwba.state.ma.us/

Annotations

Fraud in connection with franchise or distributorship relationship. 64 ALR3d 6.

Liability for delay in making repair of motor vehicle. 44 ALR4th 1174.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

ALM GL ch. 93B, § 2

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§ 2. Jurisdiction.

Any person who engages directly or indirectly in purposeful contacts in the commonwealth in connection with the offering or advertising for sale or has business dealings with respect to a motor vehicle in the commonwealth shall be subject to this chapter and shall be subject to the jurisdiction of the courts of the commonwealth, upon service of process in accordance with chapter 223A.

History

2002, 222, § 3.

Annotations

Notes

Editorial Note—

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Notes to Decisions

I. UNDER FORMER LAW

In general

Power to accept orders for motor vehicles within Commonwealth establishes parties as having business dealings subject to ALM GL c 93B, without proof of buying and selling motor vehicles. Hein-Werner Corp. v. Jackson Indus., Inc., 364 Mass. 523, 306 N.E.2d 440, 1974 Mass. LEXIS 589 (Mass. 1974).

ALM GL c 93B does not apply retroactively to contract entered into prior to its enactment. Hein-Werner Corp. v. Jackson Indus., Inc., 364 Mass. 523, 306 N.E.2d 440, 1974 Mass. LEXIS 589 (Mass. 1974).

Since business relationship between manufacturer of lawn, garden, and ground maintenance equipment, including tractors and utility vehicles, and local dealer did not involve sale of "motor vehicles," ALM GL c 93B did not apply to dealer's business operations arising out of agreements with manufacturer. Deere & Co. v. Ford, 434 Mass. 223, 747 N.E.2d 1208, 2001 Mass. LEXIS 221 (Mass. 2001).

Lawn, garden, and ground maintenance equipment, including tractors and utility vehicles, intended to care for lawns and yards and to perform landscaping and garden functions are not motor vehicles designed for regular use in transportation of persons and property on traveled part of public highways. Deere & Co. v. Ford, 434 Mass. 223, 747 N.E.2d 1208, 2001 Mass. LEXIS 221 (Mass. 2001).

Research References & Practice Aids

Research References and Practice Aids

Annotations

Regulation or licensing of business of selling motor vehicles. 57 ALR2d 1265.

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 ALR3d 1173.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 ALR4th 624.

Who is "automobile manufacturer" for purposes of the Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.). 51 ALR Fed 812.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

ALM GL ch. 93B, § 3

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§ 3. Unfair Competition and Practices.

(a) Unfair methods of competition and unfair or deceptive acts or practices, as defined in section 4, are hereby declared to be unlawful.

(b) In construing subsection (a) the courts may be guided by the interpretations of the Federal Trade Commission Act, 15 U.S.C. 45.

(c) The attorney general may make rules and regulations interpreting the subsection (a). The rules and regulations shall not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the federal courts interpreting the Federal Trade Commission Act, 15 U.S.C. 45.

History

2002, 222, § 3.

Annotations

Notes

Editorial Note—

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Notes to Decisions

I. UNDER CURRENT LAW

1. In general

Individual lacked standing to bring a claim against a truck manufacturer where the individual had performed warranty work for the manufacturer under another individual's dealership contract. Boyle v. Int'l Truck & Engine Corp., 369 F.3d 9, 2004 U.S. App. LEXIS 10065 (1st Cir. Mass. 2004).

2. Termination of franchise agreement

Distributor did not violate ALM GL c 93B, § 3 when it terminated a dealership agreement because there was good cause pursuant to both ALM GL c 93B, § 5(h) and (j) given that the agreement specifically required a temporary dealer to build a permanent facility in order to move forward and it did not do so; further, there was no bad faith on the part of the distributor, which simply enforced the agreement. In addition, the distributor gave the dealer many opportunities to cure by offering to extend deadlines. Wagner & Wagner Auto Sales, Inc. v. Land Rover N. Am., Inc., 547 F.3d 38, 2008 U.S. App. LEXIS 23066 (1st Cir. Mass. 2008).

II. UNDER FORMER LAW

In general

Chapter 93B does not unduly burden interstate commerce. Tober Foreign Motors, Inc. v. Reiter Oldsmobile, Inc., 376 Mass. 313, 381 N.E.2d 908, 1978 Mass. LEXIS 1125 (Mass. 1978).

Chapter 93B is not void under Supremacy Clause and does not conflict with Federal Antitrust Laws. Tober Foreign Motors, Inc. v. Reiter Oldsmobile, Inc., 376 Mass. 313, 381 N.E.2d 908, 1978 Mass. LEXIS 1125 (Mass. 1978).

Chapter 93B does not lack adequate specificity and does not deny due process. Tober Foreign Motors, Inc. v. Reiter Oldsmobile, Inc., 376 Mass. 313, 381 N.E.2d 908, 1978 Mass. LEXIS 1125 (Mass. 1978).

Although ALM GL c 93B applies to certain transactions between motor vehicle dealers and consumers, it is addressed primarily to unfairness in dealings among motor vehicle manufacturers, distributors and dealers. Reiter Oldsmobile, Inc. v. General Motors Corp., 378 Mass. 707, 393 N.E.2d 376, 1979 Mass. LEXIS 894 (Mass. 1979).

Unlike broad prohibition of unfair or deceptive acts or practices found in ALM GL c 93A, § 2(a), ALM GL c 93B specifies practices deemed unfair or deceptive under ALM GL c 93B, § 3. Reiter Oldsmobile, Inc. v. General Motors Corp., 378 Mass. 707, 393 N.E.2d 376, 1979 Mass. LEXIS 894 (Mass. 1979).

ALM GL c 93B is comprehensive statute covering array of business practices in automobile industry, and was enacted in recognition of potentially oppressive power of automobile manufacturers and distributors in relation to

their affiliated dealers. Beard Motors, Inc. v. Toyota Motor Distributors, Inc., 395 Mass. 428, 480 N.E.2d 303, 1985 Mass. LEXIS 1713 (Mass. 1985).

Judgment in favor of distributor in car dealer's antitrust and unfair competition action issued by district court after a bench trial was affirmed because the distributor's decision not to allocate turndowns region–wide had a plausible business rationale and there was no evidence of damages where the dealer's access to desirable turndowns was reduced in violation of ALM GL c 93B, §§ 3 and 4 (2001). Finally, there was no suggestion of ongoing harm from the distributor's unduly short notice period given five years ago regarding modification of the franchise agreement to justify an injunction. Coady Corp. v. Toyota Motor Distribs., 361 F.3d 50, 2004 U.S. App. LEXIS 5128 (1st Cir. Mass. 2004).

Automobile dealer's claim against an automobile distributor under ALM GL c 93B, § 3, was unsuccessful because its failure to meet construction and facility completion deadlines constituted "good cause" to terminate the parties' temporary dealer agreement under ALM GL c 93B, § 5(h). Wagner & Wagner Auto Sales, Inc. v. Land Rover N. Am., Inc., 539 F. Supp. 2d 461, 2008 U.S. Dist. LEXIS 23167 (D. Mass.), aff'd, 547 F.3d 38, 2008 U.S. App. LEXIS 23066 (1st Cir. Mass. 2008).

Research References & Practice Aids

Research References and Practice Aids

Federal Aspects

Federal law making unfair methods of competition unlawful, 15 USCS § 45.

Law Reviews

Brown & Cohen, Franchise Equities. 63 Mass. L. Rev. 109 (June, 1978).

Web References

Commonwealth Corporation, see www.commcorp.org/

Office of Business Development, see www.mass.gov/hed/economic/eohed/bd/

Office of Consumer Affairs and Business Regulation, see www.mass.gov/ocabr/

Office of International Trade and Investment, see www.mass.gov/hed/economic/eohed/moiti/index.html

State Office of Minority and Women Business Assistance, see www.somwba.state.ma.us/

Annotations

Regulation or licensing of business of selling motor vehicles. 57 ALR2d 1265.

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 ALR3d 1173.

Validity of disclaimer of warranty clauses in sale of new automobile. 54 ALR3d 1217.

Validity of regulations restricting size of freestanding advertising signs. 56 ALR3d 1207.

Validity, construction, and effect of clause in franchise contract prohibiting transfer of franchise or contract. 59 ALR3d 244.

Fraud in connection with franchise or distributorship relationship. 64 ALR3d 6.

Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk. 80 ALR3d 687.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 ALR3d 740.

Validity and construction of state or local regulation prohibiting off–premises advertising structures. 81 ALR3d 486.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 ALR3d 564.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 ALR4th 624.

Who is “automobile manufacturer” for purposes of the Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.). 51 ALR Fed 812.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

ALM GL ch. 93B, § 4

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§ 4. Acts Constituting Unfair Competition or Deceptive Practice.

(a) It shall be a violation of subsection (a) of section 3 for any manufacturer, distributor, franchisor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to the manufacturer, distributor, franchisor representative, motor vehicle dealer or to the public.

(b) It shall be a violation of subsection (a) of section 3 for a manufacturer, distributor or franchisor representative, to coerce, any motor vehicle dealer:

(1) to accept or buy any motor vehicle, appliance, equipment, part or accessory, or any other commodity or service which has not been ordered or requested by the motor vehicle dealer; or to require a motor vehicle dealer to accept, buy, order or purchase a motor vehicle, appliance, equipment, optional part or accessory, or any commodity or service or anything of value whether supplied or rendered by the manufacturer, distributor or franchisor representative in order to obtain any motor vehicle or any other commodity which has been ordered or requested by the motor vehicle dealer.

(2) to order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of the motor vehicles as publicly advertised by the manufacturer or distributor thereof.

(3) to order for any person and require acceptance of any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever.

(c) It shall be deemed a violation of subsection (a) of section 3 for a manufacturer, distributor or franchisor representative:

(1) to adopt, change, establish or implement a plan or system for the allocation or distribution of new motor vehicles to motor vehicle dealers which is arbitrary or unfair or to modify an existing plan so as to cause the same to be arbitrary or unfair; but it shall not be a violation of this paragraph for a manufacturer or distributor to maintain a pool of new motor vehicles in a reasonable quantity that are not included in the regular allocation, subject to the following limitations:

(i) the quantity of new motor vehicles selected by the manufacturer or distributor to include in the pool shall not exceed 15 per cent of all new motor vehicles that would otherwise be available in the current allocation and shall not exceed 15 per cent of any given model based on all new motor vehicles that would otherwise be available in the current allocation; and

(ii) new motor vehicles in the pool may be distributed in the discretion of the manufacturer or distributor for any business purpose that the manufacturer or distributor considers appropriate; provided, however, that such distribution is not in violation of paragraphs (5) or (6); but in distributing new motor vehicles from the pool to any dealership in which the manufacturer or distributor has an ownership or real estate interest, the manufacturer or distributor shall not exercise its discretion based solely on the fact that the manufacturer or distributor has an ownership or real estate interest in any dealership.

(2) to fail or refuse to advise or disclose to any motor vehicle dealer having a franchise agreement, upon written request therefor, the methodology upon which new motor vehicles of the same line make are allocated or distributed to motor vehicle dealers in the commonwealth and the methodology upon which the current allocation or distribution is being made or will be made to a motor vehicle dealer; but this paragraph shall not apply to any vehicles included in the pool of new motor vehicles described in paragraph (1).

(3) to refuse to deliver in reasonable quantities and within a reasonable time after receipt of an order by any motor vehicle dealer having a franchise agreement for the retail sale of new motor vehicles sold or distributed by the manufacturer or distributor, any motor vehicles covered by the franchise publicly advertised in media broadcast or distributed in the commonwealth by the manufacturer or distributor to be available for immediate delivery; but the failure to deliver any motor vehicle shall not be considered a violation of this chapter if the failure is due to an act of God, work stoppage or delay due to a strike or labor difficulty, shortage of materials, lack of available manufacturing capacity, freight embargo or a cause over which the manufacturer or distributor has no control.

(4) to coerce any motor vehicle dealer to enter into any agreement with the manufacturer, distributor or franchisor representative, or to do any other act prejudicial to the dealer, by threatening to terminate any franchise agreement; but, notice in good faith, including notice of termination or nonrenewal, to any motor vehicle dealer based on the dealer's violation of any terms or provisions of its franchise agreement or of any law or regulation applicable to the conduct of a motor vehicle dealership, or petitioning any court for a declaration that the notice is issued for good cause, shall not constitute a violation of this chapter.

(5) to offer to sell or to sell any new motor vehicle to any motor vehicle dealer located in the commonwealth at a lower actual price therefor than the actual price offered contemporaneously to any other motor vehicle dealer located in the commonwealth for the same model vehicle similarly equipped or to utilize any device including, but not limited to, sales promotion plans or programs which result in the lesser actual price unless available on equal terms to all dealers located in the commonwealth; provided, however, that this paragraph shall not apply to sales to a motor vehicle dealer for resale to any unit of the federal government or any agency thereof or to the commonwealth or any of its political subdivisions; provided further, that this paragraph shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by the dealer in a driver education program. The preceding provisions of this paragraph shall not apply so long as a manufacturer, distributor or franchisor representative offers to sell or sells new motor vehicles to all motor vehicle dealers located in the commonwealth at an equal price. In connection with a sale of a motor vehicle or vehicles to a motor vehicle dealer for resale to any unit of the federal government or any agency thereof or to the commonwealth or to any political subdivision thereof, no manufacturer or distributor shall offer any discounts, refunds or any other similar type of inducement to any dealer without making the same offer available to all other of its dealers within the relevant market area, and if the inducements are made, the manufacturer or distributor shall give simultaneous notice thereof to all of its dealers within the relevant market area.

(6) to offer to sell or to sell any new motor vehicle to any person located in the commonwealth, except a distributor, at a lower actual price therefor than the actual price offered and charged contemporaneously to a motor vehicle dealer located in the commonwealth for the same model vehicle similarly equipped or to utilize any device which results in such lesser actual price unless the same is available on equal terms to all dealers located in the commonwealth; but this paragraph shall not apply to sales by a manufacturer or distributor to any unit of the federal government or any agency thereof or to the commonwealth or any of its political subdivisions.

(7) to offer to sell or to sell parts or accessories to any new motor vehicle dealer located in the commonwealth for use in its own business for the purpose of repairing or replacing the same or a comparable part or accessory, at a lower actual price therefor than the actual price charged contemporaneously to any other new motor vehicle dealer located in the commonwealth for similar parts or accessories for use in its own business; but in those cases where motor vehicle dealers

operate and serve as wholesalers of parts and accessories to retail outlets, nothing herein contained shall be construed to prevent a manufacturer or distributor from selling to a motor vehicle dealer who operates and serves as a wholesaler of parts and accessories, the parts and accessories ordered by said motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories.

(8) to impose upon a motor vehicle dealer or a director, officer, partner or stockholder thereof or any other person holding or otherwise owning an interest therein, by or through the terms and provisions of a franchise agreement or otherwise, unreasonable restrictions upon the financial arrangement or structure of a dealership, upon the method and manner by which the dealership finances or intends to finance its operation, equipment and facilities or upon the ability of an individual, proprietor or stockholder to use, sell or transfer any interest in the dealership or to enter into and implement a testamentary arrangement with respect thereto; provided, however, that:

(i) a manufacturer or distributor may require a director, officer, partner or stockholder of a motor vehicle dealer, or any other person holding or otherwise owning an interest therein, to be identified as such and may establish reasonable standards concerning the capital and facilities needed for dealership operations and concerning continuity of dealership management;

(ii) there shall be no assignment, delegation or transfer of the franchise or management or control thereunder without the written consent of the manufacturer or distributor, which consent shall not unreasonably be withheld;

(iii) the manufacturer or distributor shall not deny to the surviving spouse or heirs of an individual franchised motor vehicle dealer the right to submit a proposal as provided in this section to succeed to the interest of the decedent in a franchised motor vehicle dealership enterprise or directly or indirectly to interfere with, hinder or prevent the continuance of the business of the franchised motor vehicle dealer by reason of such succession to the interest of the decedent during the pendency of any such proposal; provided, however, that the surviving spouse or heirs submit that proposal within 90 days after the decedent’s death and provide all information requested by the manufacturer or distributor in a timely manner, including the familial and business relationship of the parties, and the continuation of the business of the franchised motor vehicle dealer shall be conducted under competent management acceptable to the franchisor, whose acceptance shall not be unreasonably withheld; but, in the event that the franchised motor vehicle dealer and franchisor have executed an agreement concerning succession rights prior to the individual dealer’s, partner’s or stockholder’s death and if such agreement has not been revoked by the franchised motor vehicle dealer, the agreement shall control even if it designates an individual other than the surviving spouse or heirs of the decedent;

(iv) the manufacturer or distributor shall promptly mail a dealership application to a proposed assignee, delegatee or transferee following a request submitted by the proposed assigning, delegating or transferring motor vehicle dealer and the proposed assignee, delegatee or transferee shall submit the application to the manufacturer or distributor with all supporting documentation as specified by the manufacturer or distributor; and the manufacturer or distributor shall, within 30 days of receipt of the application and all supporting documentation as specified therein, review it and notify the assignee, delegatee or transferee what additional information, data or documents, if any, is needed by the manufacturer or distributor to complete its review and, upon the submission of all specified additional information, data or documents by the assignee, delegatee or transferee, the manufacturer or distributor shall, within 30 days after receipt, make its decision to approve or reject the proposed sale, assignment, or transfer; provided, however, that if the manufacturer or distributor does not reject such application within 30 days after the submission of all of the requested additional information, data or documents, the application shall be considered approved for all purposes, unless the 30-day deadline is extended by mutual agreement of the manufacturer or distributor and the proposed assigning, delegating or transferring dealer; provided, further, that if the manufacturer or distributor did not request any additional information, data or documents, the manufacturer or distributor shall, within 60 days of the receipt of the application and all supporting

documentation, review the application and approve or reject it but, if the manufacturer or distributor does not reject the application within that 60-day period and the 60-day period is not otherwise extended by mutual agreement of the manufacturer or distributor and the proposed assigning, delegating or transferring dealer, the application shall be considered approved for all purposes; and

(v) if a franchise agreement specifies that the consent of the manufacturer or distributor shall be obtained before a dealer engages in dualing, the consent shall not be unreasonably withheld, but nothing in this clause shall modify or supersede any term of a franchise agreement requiring a dealer to maintain an exclusive facility for its operations.

(9) to obtain money, goods, services, anything of value, or any other benefit from any other person with whom the motor vehicle dealer does business, on account of or in relation to the transactions between the dealer and the other person as compensation except for services actually rendered, unless the benefit is promptly accounted for and transmitted to the motor vehicle dealer.

(10) to own or operate, either directly or indirectly through any subsidiary, parent company or firm, a motor vehicle dealership located in the commonwealth of the same line make as any of the vehicles manufactured, assembled or distributed by the manufacturer or distributor. A manufacturer or distributor shall not be in violation of this paragraph when: (i) owning or operating a dealership temporarily for a reasonable period, in any case not to exceed 1 year; (ii) in a bona fide relationship in which an independent person is required to make an initial ownership investment subject to loss in the dealership of not less than 7 per cent of the equity investment and can be reasonably expected, pursuant to a bona fide written agreement in effect between the manufacturer or distributor and the independent person, to acquire full ownership of the dealership on reasonable terms and conditions and within a reasonable period of time not to exceed 12 years unless good cause exists to extend said 12 year time period; provided, however, that the source for said initial ownership investment shall be from investors or lenders other than the manufacturer or distributor holding an ownership in the dealership; and provided, further, that for the purposes of clause (ii), good cause shall mean circumstances that are beyond the reasonable control of the independent person or the manufacturer or distributor holding an ownership in the dealership; (iii) owning or operating a dealership selling recreational vehicles temporarily during the transition from one owner of the dealership to another that the temporary period may be extended in 1 year increments for a maximum extension up to 2 years, if good cause is shown; provided, further, that the manufacturer or distributor who owns or operates a dealership selling recreational vehicles upon owning or operating the dealership shall immediately make a reasonable effort to notify all dealerships selling recreational vehicles in the commonwealth that the dealership is for sale, the earliest date that the manufacturer took ownership or began operating the dealership and the contact person to arrange the sale of the dealership; provided, further, that upon written request to a manufacturer or distributor by a dealer of the same line make as a dealership established under clause (ii), the manufacturer or distributor shall send the requesting dealer a written statement verifying that the relationship with the independent person is in compliance with this paragraph; and provided, further, that the manufacturer or distributor shall not disclose any personal or financial information of the independent person or dealership.

(11) to coerce a motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel which would prospectively relieve any person from liability imposed by this chapter.

(12) to act to accomplish, either directly or indirectly through any parent company, subsidiary, or agent, what would otherwise be prohibited under this chapter on the part of the manufacturer or distributor. This section shall not limit the right of any parent company, subsidiary, or agent to engage in business practices otherwise lawful in accordance with the usage of the trade in which it is engaged.

(d) It shall be a violation of subsection (a) of section 3 for a motor vehicle dealer:

(1) to require a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser; provided, however, that this prohibition shall not apply as to special features, appliances, equipment, parts or accessories which are already installed on the motor vehicle when received by the

dealer; provided further, that the motor vehicle dealer prior to the consummation of the purchase reveals to the purchaser the substance of this paragraph;

(2) to represent and sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle; or

(3) to assign, delegate or transfer its franchise agreement, or any ownership interest or management control in the dealership, without the prior written consent of the manufacturer or distributor, which consent shall not unreasonably be withheld.

History

2002, 222, § 3; 2012, 152, §§ 3, 4.

Annotations

Notes

Codification

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

> SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Amendment Notes

The 2012 amendment, effective Oct 16, 2012, by § 3, rewrote (c)(8) and by § 4, added “provided, further, that upon written request to a manufacturer or distributor by a dealer of the same line make as a dealership established under clause (ii), the manufacturer or distributor shall send the requesting dealer a written statement verifying that the relationship with the independent person is in compliance with this paragraph; and provided, further, that the manufacturer or distributor shall not disclose any personal or financial information of the independent person or dealership” at the end of (c)(10).

NOTES TO DECISIONS

I.UNDER CURRENT LAW

1.In general

II.UNDER FORMER ALM GL c 93B § 4

I. UNDER CURRENT LAW

1. In general

Car dealer did not have standing to challenge a manufacturer's franchising of a new dealer using an air mile distance calculation where the new dealer was merely tangent to the relevant market area as defined by ALM GL c 93B, § 4(3)(1) (2002). Am. Honda Motor Co. v. Richard Lundgren, Inc., 314 F.3d 17, 2002 U.S. App. LEXIS 26374 (1st Cir. Mass. 2002).

Car dealer did not have standing to challenge a manufacturer's franchising of a new dealer using a drive time calculation where there was no showing that a relevant market area based on the drive time radius produced anything like the required circular shape. Am. Honda Motor Co. v. Richard Lundgren, Inc., 314 F.3d 17, 2002 U.S. App. LEXIS 26374 (1st Cir. Mass. 2002).

Judgment in favor of distributor in car dealer's antitrust and unfair competition action issued by district court after a bench trial was affirmed because the distributor's decision not to allocate turndowns region–wide had a plausible business rationale and there was no evidence of damages where the dealer's access to desirable turndowns was reduced in violation of ALM GL c 93B, §§ 3 and 4 (2001). Finally, there was no suggestion of ongoing harm from the distributor's unduly short notice period given five years ago regarding modification of the franchise agreement to justify an injunction. Coady Corp. v. Toyota Motor Distribs., 361 F.3d 50, 2004 U.S. App. LEXIS 5128 (1st Cir. Mass. 2004).

Plaintiff seeking to recover damages for a violation of former ALM GL c 93B, § 4(3)(k) must show not only a violation of the statute but also harm resulting from that violation. The latter showing requires competent proof that the plaintiff sustained a loss of money or property attributable to the manufacturer's unlawful ownership and operation of the competing dealership. Cadillac/Oldsmobile/Nissan Ctr., Inc. v. GMC, 391 F.3d 304, 2004 U.S. App. LEXIS 25175 (1st Cir. Mass. 2004).

Automobile dealer's claim under ALM GL c 93B, § 4(3)(k) failed where it had presented no evidence that an automobile manufacturer's unlawful ownership of a competing dealership had caused the dealer to lose sales or profits. Cadillac/Oldsmobile/Nissan Ctr., Inc. v. GMC, 391 F.3d 304, 2004 U.S. App. LEXIS 25175 (1st Cir. Mass. 2004).

Franchisee car dealership failed to demonstrate that the manufacturer's decision to establish a new dealership nearby was arbitrary. Gallo Motor Ctr. Corp. v. Mazda Motor of Am., Inc., 204 F. Supp. 2d 144, 2002 U.S. Dist. LEXIS 8982 (D. Mass. 2002), aff'd, 347 F.3d 20, 2003 U.S. App. LEXIS 20984 (1st Cir. Mass. 2003).

Automobile distributor knew that fraudulent sales reporting took place in the region but that knowledge was insufficient to establish its liability for implementing an "arbitrary or unfair" system of vehicle allocations under ALM GL c 93B, the so–called "Dealer's Bill of Rights." For such liability to attach, the dealership was required show that

the distributor affirmatively facilitated or encouraged false sales reporting. Coady Corp. v. Toyota Motor Distribs., 346 F. Supp. 2d 225, 2003 U.S. Dist. LEXIS 26057 (D. Mass. 2003), aff'd, 361 F.3d 50, 2004 U.S. App. LEXIS 5128 (1st Cir. Mass. 2004).

Automobile distributor's using a facsimile machine instead of computer e–mails to notify dealers of turn–downed vehicles available on a "first come, first served" basis was not an unfair and arbitrary system of allocation under ALM GL c 93B, the so–called "Dealer's Bill of Rights;" therefore, the dealership at the bottom of the facsimile list had not proven a violation. Coady Corp. v. Toyota Motor Distribs., 346 F. Supp. 2d 225, 2003 U.S. Dist. LEXIS 26057 (D. Mass. 2003), aff'd, 361 F.3d 50, 2004 U.S. App. LEXIS 5128 (1st Cir. Mass. 2004).

Notwithstanding an automobile dealership's expenditure of $200,000 on qualifying improvements to its facility, distributor's failure to provide 30 vehicles to it under a market representation vehicle support program did not constitute an unfair and arbitrary system of allocation under ALM GL c 93B, the so–called "Dealer's Bill of Rights," because the dealership failed to provide the distributor with receipts to verify its construction expenditure which was a prerequisite under the program. Coady Corp. v. Toyota Motor Distribs., 346 F. Supp. 2d 225, 2003 U.S. Dist. LEXIS 26057 (D. Mass. 2003), aff'd, 361 F.3d 50, 2004 U.S. App. LEXIS 5128 (1st Cir. Mass. 2004).

Distributor's attempt to persuade an auto dealership to sign up for the distributor's parts program did not cause the dealership to sing up for that program or to take or refrain from taking any other action. The dealership, therefore, suffered no damages as a result of the threats and could not recover with respect to its claim against the distributor under the ALM GL c 93B, the so–called "Dealer's Bill of Rights," on the basis of that interaction. Coady Corp. v. Toyota Motor Distribs., 346 F. Supp. 2d 225, 2003 U.S. Dist. LEXIS 26057 (D. Mass. 2003), aff'd, 361 F.3d 50, 2004 U.S. App. LEXIS 5128 (1st Cir. Mass. 2004).

Although "packaging" had occurred in the region in the past, there was no proof that an automobile distributor ever coerced a dealership into accepting less desirable vehicles in order to obtain more desirable vehicles. Moreover, the dealership offered no evidence of damages arising from the claim and, therefore, may not recover with respect to its claim under ALM GL c 93B, the so–called "Dealer's Bill of Rights," against the distributor on the ground of its "packaging" practices. Coady Corp. v. Toyota Motor Distribs., 346 F. Supp. 2d 225, 2003 U.S. Dist. LEXIS 26057 (D. Mass. 2003), aff'd, 361 F.3d 50, 2004 U.S. App. LEXIS 5128 (1st Cir. Mass. 2004).

Automobile distributor's telling a dealership that it would ship a toolbox which the dealership had not ordered and did not want, to the dealership and deduct $5,000 from its account could not form the basis of a claim under ALM GL c 93B, the so–called "Dealer's Bill of Rights," because the dealership failed to allege or offer any evidence with respect to damages for the violation, if there was one. Coady Corp. v. Toyota Motor Distribs., 346 F. Supp. 2d 225, 2003 U.S. Dist. LEXIS 26057 (D. Mass. 2003), aff'd, 361 F.3d 50, 2004 U.S. App. LEXIS 5128 (1st Cir. Mass. 2004).

II. UNDER FORMER ALM GL c 93B § 4

3. In general

ALM GL c 93B is aimed at eliminating industry practices which may be thought to operate unfairly or coercively, and at protecting franchisees from having to succumb to dictation by manufacturers pressing their own interest in disregard of health of other elements in trade and perhaps ultimately of welfare of public. Tober Foreign Motors, Inc. v. Reiter Oldsmobile, Inc., 376 Mass. 313, 381 N.E.2d 908, 1978 Mass. LEXIS 1125 (Mass. 1978).

Considerations other than dealer default may furnish cause for cancelling, terminating, or refusing to renew motor vehicle dealer's agreement or franchise. Amoco Oil Co. v. Dickson, 378 Mass. 44, 389 N.E.2d 406, 1979 Mass. LEXIS 799 (Mass. 1979).

Although ALM GL c 93B applies to certain transactions between motor vehicle dealers and consumers, it is addressed primarily to unfairness in dealings among motor vehicle manufacturers, distributors and dealers. Reiter Oldsmobile, Inc. v. General Motors Corp., 378 Mass. 707, 393 N.E.2d 376, 1979 Mass. LEXIS 894 (Mass. 1979).

Unlike broad prohibition of unfair or deceptive acts or practices found in ALM GL c 93A, § 2(a), ALM GL c 93B specifies practices deemed unfair or deceptive under ALM GL c 93B, § 3. Reiter Oldsmobile, Inc. v. General Motors Corp., 378 Mass. 707, 393 N.E.2d 376, 1979 Mass. LEXIS 894 (Mass. 1979).

Legislature has limited right of certain franchisors to terminate franchise agreement without cause. Zapatha v. Dairy Mart, Inc., 381 Mass. 284, 408 N.E.2d 1370, 1980 Mass. LEXIS 1260 (Mass. 1980).

Intention of legislature was to protect motor vehicle franchisees and dealers from type of injury to which they had been susceptible by virtue of inequality of their bargaining power and that of their affiliated manufacturers and distributors. Beard Motors, Inc. v. Toyota Motor Distributors, Inc., 395 Mass. 428, 480 N.E.2d 303, 1985 Mass. LEXIS 1713 (Mass. 1985).

In addition to governing relations among manufacturers, distributors, and dealers, ALM GL c 93B also applies to certain transactions between dealers and the public, and thus also serves to protect the public. American Honda Motor Co. v. Bernardi's, Inc., 432 Mass. 425, 735 N.E.2d 348, 2000 Mass. LEXIS 531 (Mass. 2000).

Words “customer” and “purchaser0” are used interchangeably in ALM GL c 93B. Commonwealth v. Wellesley Toyota Co., 18 Mass. App. Ct. 733, 470 N.E.2d 142, 1984 Mass. App. LEXIS 1739 (Mass. App. Ct. 1984).

Two questions regarding interpretation of ALM GL c 93B, § 4 are certified to Supreme Judicial Court of Massachusetts, where 2 existing automobile dealers seek to challenge manufacturer’s allegedly arbitrary awarding of new dealership, but District Court’s interpretation leads to conclusion that dealers lack standing to sue for statutory relief, because there is no clear controlling precedent on these 2 pertinent issues. American Honda Motor Co. v. Bernardi's, Inc., 198 F.3d 293, 1999 U.S. App. LEXIS 32452 (1st Cir. Mass. 1999).

Car dealer cannot maintain action against manufacturer under ALM GL c 93B, § 4(1), where dealer was informed by one of manufacturer’s managers that it could not acquire nearby dealership based on manufacturer’s prohibition against ownership of 2 dealerships in same market, but then another nearby dealer was granted permission to purchase and relocate dealership within same market, because manufacturer always retained right to depart from prohibition, and did so for reasons that were not arbitrary or in bad faith. Bertera Chrysler Plymouth v. Chrysler Corp., 992 F. Supp. 64, 1998 U.S. Dist. LEXIS 7258 (D. Mass. 1998).

Under ALM GL c 93B, § 4(3)(l), dealer’s “relevant market area” is circle, not oval drawn around polygon, with dealer at center, circumscribing either two–thirds of dealer’s new vehicle sales or two–thirds of its service sales, whichever is smaller. American Honda Motor Co. v. Bernardi's, Inc., 113 F. Supp. 2d 54, 1999 U.S. Dist. LEXIS 9283 (D. Mass. 1999), vacated, 235 F.3d 1, 2000 U.S. App. LEXIS 34824 (1st Cir. 2000).

Under ALM GL c 93B, § 4(3)(l), both automobile distributor’s allegedly retaliatory motives and its dealer candidate selection process were pertinent circumstances that court could consider in determining if distributor’s proposed placement of new dealership was unlawfully “arbitrary.” American Honda Motor Co. v. Bernardi's, Inc., 113 F. Supp. 2d 58, 1999 U.S. Dist. LEXIS 10559 (D. Mass. 1999).

In action by plaintiff alleging that it was wrongfully deprived of its dealership selling defendant’s new cars when defendant, upon reintroducing product line of new cars in United States 12 years after predecessor entity completely withdrew from North American market, used affiliate’s existing automobile dealerships rather than plaintiff’s dealership, which predecessor entity had used, plaintiff’s claim that defendant and its affiliate violated ALM GL c 93B was dismissed on ground that no successor liability existed on part of manufacturer or affiliate; no ruling was made on merits of plaintiff’s claim. Motorsport Eng'g Inc. v. Maserati, S.p.A., 183 F. Supp. 2d 209, 2001 U.S. Dist. LEXIS 22016 (D. Mass. 2001), aff'd, 316 F.3d 26, 2002 U.S. App. LEXIS 26373 (1st Cir. Mass. 2002).

In action by plaintiff automobile dealership against defendant automobile manufacturer and its affiliate, claim that defendant breached "Standard Dealers Agreement" executed by plaintiff and defendant's predecessor, was dismissed on grounds that (1) Standard Dealers Agreement terminated when predecessor manufacturer completely withdrew from North American market in 1980's for business reasons, (2) plaintiff failed to establish successor liability, or that defendant manufacturer and its affiliate otherwise assumed any liabilities created by earlier entity, and (3) defendant did not breach any agreement with plaintiff by reintroducing its product line in United States 12 years later using affiliate's existing automobile dealerships rather than plaintiff's dealership. Motorsport Eng'g Inc. v. Maserati, S.p.A., 183 F. Supp. 2d 209, 2001 U.S. Dist. LEXIS 22016 (D. Mass. 2001), aff'd, 316 F.3d 26, 2002 U.S. App. LEXIS 26373 (1st Cir. Mass. 2002).

4. —Bad faith

Chapter 93B does not lack adequate specificity and does not deny due process. Tober Foreign Motors, Inc. v. Reiter Oldsmobile, Inc., 376 Mass. 313, 381 N.E.2d 908, 1978 Mass. LEXIS 1125 (Mass. 1978).

Chapter 93B is not void under Supremacy Clause and does not conflict with Federal Antitrust Laws. Tober Foreign Motors, Inc. v. Reiter Oldsmobile, Inc., 376 Mass. 313, 381 N.E.2d 908, 1978 Mass. LEXIS 1125 (Mass. 1978).

Chapter 93B does not unduly burden interstate commerce. Tober Foreign Motors, Inc. v. Reiter Oldsmobile, Inc., 376 Mass. 313, 381 N.E.2d 908, 1978 Mass. LEXIS 1125 (Mass. 1978).

5. —Commercially reasonable fashion

Automobile manufacturer acted in commercially reasonable fashion when it refused to consent to assignment of dealership, where dealership at "auto mall" (operation of several dealerships in one building) had been financial failure. Greater Lowell Auto Mall, Inc. v. Toyota Motor Distribs., Inc., 35 Mass. App. Ct. 247, 618 N.E.2d 1369, 1993 Mass. App. LEXIS 841 (Mass. App. Ct. 1993).

Unlike Automobile Dealers' Day in Court Act (ADDCA), ALM GL c 93B does not define "bad faith" or "good cause", and thus, court, in determining "bad faith" under ALM GL c 93B, is not bound by same restrictions as under ADDCA; bad faith may encompass broader conduct under ALM GL c 93B than mere coercion or intimidation. General GMC, Inc. v. Volvo White Truck Corp., 918 F.2d 306, 1990 U.S. App. LEXIS 19773 (1st Cir. Mass. 1990).

In action under ALM GL c 93B, § 4, for termination of franchise, question of material fact existed making summary judgment inappropriate as to whether defendants acted in bad faith within meaning of ALM GL c 93B, § 4. General GMC, Inc. v. Volvo White Truck Corp., 918 F.2d 306, 1990 U.S. App. LEXIS 19773 (1st Cir. Mass. 1990).

Under former ALM GL c 93B, § 4(3)(l), the court was not limited to the statutory factors in determining whether an automobile manufacturer's decision to add a new dealership within an existing dealer's market area was arbitrary, and all pertinent circumstances, including a prior market study, an after–the–fact expert report, and the existing dealer's lack of objection to an additional nearby dealership, were properly considered in finding that the manufacturer's decision was not arbitrary. Gallo Motor Ctr., Inc. v. Mazda Motor of Am., Inc., 347 F.3d 20, 2003 U.S. App. LEXIS 20984 (1st Cir. Mass. 2003).

Defendant automobile manufacturer's nondiscriminatory decision to completely withdraw from North American new car market, thereby terminating its "Standard Dealers Agreement" with plaintiff dealership, was reasonable based on its low new car sales in United States in late 1980's, and it was also reasonable for corporation which acquired defendant successor manufacturer to use its existing new car dealerships in United States to reintroduce defendants' automobiles 12 years later rather than using plaintiff dealership, and thus claims for alleged violation of Massachusetts Consumer Protection Statute and Standard Dealers Agreement were dismissed on merits, as well as on grounds of no successor liability. Motorsport Eng'g Inc. v. Maserati, S.p.A., 183 F. Supp. 2d 209, 2001 U.S. Dist. LEXIS 22016 (D. Mass. 2001), aff'd, 316 F.3d 26, 2002 U.S. App. LEXIS 26373 (1st Cir. Mass. 2002).

6. Violation of former ALM GL c 93B § 3(e)(3)

Although language of ALM GL c 93B sets forth no specific test for determining party's entitlement to stay under subsection (3)(e)(3), thrust of statute is to provide "injunctive relief" to dealers threatened with termination of franchise, thus, stay of termination is essentially identical to preliminary injunction, and criteria governing entitlement to relief include whether (1) plaintiff will suffer irreparable injury if injunction is not granted, (2) such injury outweighs harm which granting relief would inflict on defendant, (3) plaintiff has exhibited likelihood of success on merits, and (4) public interest will not be adversely effected by granting injunction. Foreign Motors, Inc. v. Audi of America, Inc., 755 F. Supp. 30, 1991 U.S. Dist. LEXIS 3609 (D. Mass. 1991).

On facts of case, automobile manufacturer had good cause to terminate dealership within meaning of "good cause" requirement of subsection (3)(e). Foreign Motors, Inc. v. Audi of America, Inc., 755 F. Supp. 30, 1991 U.S. Dist. LEXIS 3609 (D. Mass. 1991).

7. Violation of former ALM GL c 93B § 3(i)

Prospective purchaser of motor vehicle dealership does not have standing under ALM GL c 93B, § 12A to bring action against motor vehicle distributor who unreasonably withholds consent to transfer of prospective seller's franchise in violation of ALM GL c 93B, § 4(3)(i). Beard Motors, Inc. v. Toyota Motor Distributors, Inc., 395 Mass. 428, 480 N.E.2d 303, 1985 Mass. LEXIS 1713 (Mass. 1985).

Prospective purchaser of motor vehicle dealership whose injuries for manufacturer's refusal to consent to transfer would include loss of anticipated profits and of capital appreciation in value of dealership would not sustain injuries within area of legislative concern that resulted in enactment of ALM GL c 93B, § 4(3)(i). Beard Motors, Inc. v. Toyota Motor Distributors, Inc., 395 Mass. 428, 480 N.E.2d 303, 1985 Mass. LEXIS 1713 (Mass. 1985).

Prospective transferee of rights in automobile dealership does not have standing to maintain action against manufacturer for unreasonably withholding consent to transfer of dealership by dealer to that prospective assignee. Greater Lowell Auto Mall, Inc. v. Toyota Motor Distribs., Inc., 35 Mass. App. Ct. 247, 618 N.E.2d 1369, 1993 Mass. App. LEXIS 841 (Mass. App. Ct. 1993).

Existing dealer's assignment of its rights against manufacturer for refusing to consent to transfer of dealership does not give prospective transferee standing to bring action against manufacturer. Greater Lowell Auto Mall, Inc. v. Toyota Motor Distribs., Inc., 35 Mass. App. Ct. 247, 618 N.E.2d 1369, 1993 Mass. App. LEXIS 841 (Mass. App. Ct. 1993).

ALM GL c 93B, § 4(3)(i), requiring manufacturers not to unreasonably withhold consent to transfer of dealership, and ALM GL c 93B, § 4(3)(l), prohibiting manufacturers from arbitrarily granting new dealership in or consenting to relocation of dealership to area within relevant market area of existing dealership, may overlap but are not contradictory. Heritage Jeep-Eagle v. Chrysler Corp., 39 Mass. App. Ct. 254, 655 N.E.2d 140, 1995 Mass. App. LEXIS 787 (Mass. App. Ct. 1995).

Existence of genuine doubts as to prospective dealer's business acumen and financial capabilities, when combined with "dualing" proposal that is justifiably disfavored by manufacturer, furnishes ample justification for withholding of consent under ALM GL c 93B, § 4(3)(i). Simonds Chevrolet, Inc. v. General Motors Corp., 564 F. Supp. 151, 1983 U.S. Dist. LEXIS 17519 (D. Mass. 1983).

8. Violation of former ALM GL c 93B § 3(l)

Shape of "relevant market area," as defined under ALM GL c 93B, § 4(3)(l), fifth par., is geographic area generally circular in shape, although not perfect circle, and contiguous to existing dealer's location. American Honda Motor Co. v. Bernardi's, Inc., 432 Mass. 425, 735 N.E.2d 348, 2000 Mass. LEXIS 531 (Mass. 2000).

Methodology used to compute and plat two–thirds of dealer's new vehicle sales or service sales is left to expert testimony, but such methodology must comport with definition of "relevant market area." American Honda Motor Co. v. Bernardi's, Inc., 432 Mass. 425, 735 N.E.2d 348, 2000 Mass. LEXIS 531 (Mass. 2000).

ALM GL c 93B, § 4(3)(l) is sole provision within chapter 93B under which dealer may reek relief from establishment of prospective new dealership that will sell vehicles of same line make as existing dealer. American Honda Motor Co. v. Bernardi's, Inc., 432 Mass. 425, 735 N.E.2d 348, 2000 Mass. LEXIS 531 (Mass. 2000).

Dealer aggrieved by alleged retaliatory conduct of manufacturer or distributor in connection with proposal to establish new dealership may challenge such conduct as "arbitrary" under ALM GL c 93B, § 4(3)(l). American Honda Motor Co. v. Bernardi's, Inc., 432 Mass. 425, 735 N.E.2d 348, 2000 Mass. LEXIS 531 (Mass. 2000).

Manufacturer's approval of sale of automobile dealership and its relocation by buyer to site that two existing franchisees claimed to be in their relevant market area (in contrast to granting of new additional franchise in such area) can constitute violation of ALM GL c 93B, § 4(3)(l). Heritage Jeep-Eagle v. Chrysler Corp., 39 Mass. App. Ct. 254, 655 N.E.2d 140, 1995 Mass. App. LEXIS 787 (Mass. App. Ct. 1995).

Word "additional" in ALM GL c 93B, § 4(3)(l) cannot be read to mean net increase in total number of franchisees without reference to relationship between increase in number and defined area, i.e., statute directs itself to granting of franchise or selling arrangement that will add dealer of same line make to those already existing in relevant market area. Heritage Jeep-Eagle v. Chrysler Corp., 39 Mass. App. Ct. 254, 655 N.E.2d 140, 1995 Mass. App. LEXIS 787 (Mass. App. Ct. 1995).

As used in ALM GL c 93B, § 4(3)(l), word "arbitrary" is term of art that connotes that new dealership will impinge economically on existing dealership. Richard Lundgren, Inc. v. American Honda Motor Co., 45 Mass. App. Ct. 410, 699 N.E.2d 11, 1998 Mass. App. LEXIS 976 (Mass. App. Ct. 1998).

Right to recover legal expenses under ALM GL c 93B, § 12A refers to action for damages commenced under ALM GL c 93B, § 12A and not to procedure under ALM GL c 93B, § 4(3)(l) under which motor vehicle manufacturers and dealers can determine if proposed new dealership would unfairly poach on existing dealership's territory. Richard Lundgren, Inc. v. American Honda Motor Co., 45 Mass. App. Ct. 410, 699 N.E.2d 11, 1998 Mass. App. LEXIS 976 (Mass. App. Ct. 1998).

Where motor vehicle manufacturer had notified motor vehicle dealer of its intent to establish new dealership in nearby community and dealer brought action to have proposed franchise declared "arbitrary" under ALM GL c 93B, § 4(3)(l), judge's finding that new dealership would be arbitrary in sense of statute did not constitute violation of statute by manufacturer; therefore, judge's award of legal fees and costs was not warranted. Richard Lundgren, Inc. v. American Honda Motor Co., 45 Mass. App. Ct. 410, 699 N.E.2d 11, 1998 Mass. App. LEXIS 976 (Mass. App. Ct. 1998).

Automobile dealer's claim against franchisor under ALM GL c 93B, § 4(3)(l) was properly rejected, for failure to meet statutory requirements re: notice of new ownership and letter of objection. Boston Car Co. v. Acura Auto. Div., American Honda Motor Co., 971 F.2d 811, 1992 U.S. App. LEXIS 17789 (1st Cir. Mass. 1992).

Trial would be expedited on dealer's claims for violation of Massachusetts automobile franchising laws, unfair competition, and interference with prospective contractual relations, even though manufacturer did not have right to speedy trial under ALM GL c 93B, § 4, to allow manufacturer to mitigate damages by resolving matter before new dealership opened, where most of evidence needed for both parties to present their cases already was in manufacturer's hands, and some expedition would not impose undue hardship on dealership. Gallo Motor Ctr. Corp. v. Mazda Motor of Am., Inc., 172 F. Supp. 2d 292, 2001 U.S. Dist. LEXIS 23135 (D. Mass. 2001).

Defendant, automobile dealership, lacked standing to contest manufacturer's establishment of new dealership where proposed new dealership was not located within defendant's relevant market area. Am. Honda Motor Co. v. Bernardi's, Inc., 188 F. Supp. 2d 27, 2002 U.S. Dist. LEXIS 2614 (D. Mass.), aff'd, 314 F.3d 17, 2002 U.S. App. LEXIS 26374 (1st Cir. Mass. 2002).

Although ALM GL c 93B, § 4(l) sets forth factors that bear on court's determination of arbitrariness, it is silent as to what constitutes adequate notice; court's assessment of adequacy of notice is not determined by clear calculus but rather by concepts of procedural fairness. Gallo Motor Ctr. Corp. v. Mazda Motor of Am., Inc., 190 F. Supp. 2d 188, 2002 U.S. Dist. LEXIS 3916 (D. Mass. 2002).

Under ALM GL c 93B, § 4(3)(l), there is neither affirmative obligation on dealer to investigate proposed dealership nor requirement of manufacturer to offer detailed disclosure in its notice letter; rather, statute merely sets forth rules governing timing of notice and intent–to–sue letter. Gallo Motor Ctr. Corp. v. Mazda Motor of Am., Inc., 190 F. Supp. 2d 188, 2002 U.S. Dist. LEXIS 3916 (D. Mass. 2002).

Manufacturer was not entitled to summary judgment dismissing dealership's action alleging violation of so–called "Dealer's Bill of Rights" (ALM GL c 93B, § 4(3)(l)) where fact issue existed as to whether there was adequate notice given by manufacturer to dealership regarding proposed new franchise. Gallo Motor Ctr. Corp. v. Mazda Motor of Am., Inc., 190 F. Supp. 2d 188, 2002 U.S. Dist. LEXIS 3916 (D. Mass. 2002).

9. Violation of former ALM GL c 93B § 4(4)(a)

Statutory prohibition in ALM GL c 93B, § 4(4)(a) is against requiring acceptance of undesired dealer–installed options as condition of sale and delivery, without regard to whether they are installed before or after entry into sales contract. Commonwealth v. Wellesley Toyota Co., 18 Mass. App. Ct. 733, 470 N.E.2d 142, 1984 Mass. App. LEXIS 1739 (Mass. App. Ct. 1984).

Preliminary injunction restraining new car dealer from selling new car with accessories, trim and treatments which customer did not ask for and did not want ("option packing") but were added to car at order of dealer was properly issued, inasmuch as dealer's practice violated ALM GL c 93B, § 4(4)(a). Commonwealth v. Wellesley Toyota Co., 18 Mass. App. Ct. 733, 470 N.E.2d 142, 1984 Mass. App. LEXIS 1739 (Mass. App. Ct. 1984).

Notes to Unpublished Decisions

I.UNDER CURRENT LAW

2.Miscellaneous

I. UNDER CURRENT LAW

2. Miscellaneous

Unpublished decision: Where a manufacturer served a dealer with a notice of termination due to the loss of a revolving credit agreement, the dealer's claim for breach of an auto sales franchise agreement under ALM GL c 93B failed because, inter alia, the manufacturer's obligation to consider a buyer at the dealer's behest did not extend to a buyer proposed a week before the scheduled termination since, both by statute and by contract, the manufacturer had the right to a longer period to make due diligence enquiries about the buyer than the remaining period of the franchise. South Shore Imported Cars, Inc. v. Volkswagen of Am., Inc., 439 Fed. Appx. 7, 2011 U.S. App. LEXIS 13715 (1st Cir. Mass. 2011).

Research References & Practice Aids

Research References and Practice Aids

Law Reviews

Emerson, Franchise Encroachment. 47 Am. Bus. L.J. 191 (Summer, 2010).

Mcmillian, What Will It Take to Get You in a New Car Today?: A Proposal for a New Federal Automobile Dealer Act. 45 Gonz. L. Rev. 67 (2009/2010).

Brown & Cohen, Franchise Equities. 63 Mass. L. Rev. 109 (June, 1978).

Annotations

Regulation or licensing of business of selling motor vehicles. 57 ALR2d 1265.

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 ALR3d 1173.

Billboards and other outdoor advertising signs as civil nuisance. 38 ALR3d 647.

Damages for wrongful termination of automobile dealership contracts. 54 ALR3d 324.

Validity, construction, and effect of clause in franchise contract prohibiting transfer of franchise or contract. 59 ALR3d 244.

Fraud in connection with franchise or distributorship relationship. 64 ALR3d 6.

Scope and exemptions of state deceptive trade practice and consumer protection acts. 89 ALR3d 399.

Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Liability for interference with franchise. 97 ALR3d 890.

Validity, construction, and effect of state motor vehicle warranty legislation (lemon law). 51 ALR4th 872.

Coverage of insurance transactions under state consumer protection statutes. 77 ALR4th 991.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 ALR4th 624.

Coverage of leases under state consumer protection statutes. 89 ALR4th 854.

Who is a “consumer” entitled to protection of state deceptive trade practice and consumer protection acts. 63 ALR5th 1.

Who is “automobile manufacturer” for purposes of the Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.). 51 ALR Fed 812.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

ALM GL ch. 93B, § 5

Current through Chapter 116 of the 2022 Legislative Session of the 192nd General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE XV REGULATION OF TRADE (Chs. 93 - 110H) > TITLE XV REGULATION OF TRADE (Chs. 93 — 110H) > Chapter 93B Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers (§§ 1 — 18)

§ 5. Renewal, Termination or Transfer of Franchise.

(a) It shall be a violation of subsection (a) of section 3 for a manufacturer, distributor or franchisor representative without good cause, in bad faith or in an arbitrary or unconscionable manner: (1) to terminate the franchise agreement of a motor vehicle dealer; (2) to fail or refuse to extend or renew the franchise agreement of a motor vehicle dealer upon its expiration; (3) to offer a renewal, replacement or succeeding franchise agreement containing terms and conditions the effect of which is to substantially change the sales and service obligations, capital requirements or facilities requirements of a motor vehicle dealer; or (4) to amend, add or delete any other material term or condition set forth in a motor vehicle dealer's franchise agreement.

(b) A manufacturer, distributor or franchisor representative shall send notice to a motor vehicle dealer in writing of the termination of the franchise agreement of the dealer at least 60 days before the effective date thereof, stating the specific grounds for such termination; and a manufacturer, distributor or franchisor representative shall send notice to a motor vehicle dealer in writing at least 60 days before the contractual term of its franchise agreement expires when the same will not be renewed stating the specific grounds for the nonrenewal, or when the same will be renewed but with changes, amendments, additions or deletions of the type described in subsection (a).

(c) If the basis for the termination of or refusal to renew the franchise agreement of a motor vehicle dealer is due to a failure to comply with the manufacturer's or distributor's reasonable sales performance criteria, the manufacturer, distributor or franchisor representative shall, at least 180 days before sending any notice of termination or nonrenewal described in subsection (b) inform said motor vehicle dealer in writing of the sales performance deficiency and shall include a specific statement as to what the dealer must achieve in terms of sales performance in order to cure the deficiency. The writing shall explicitly state that a notice of termination or nonrenewal shall follow should the sales performance deficiency not be cured within the 180 day cure period. If the basis for the termination of or refusal to renew the franchise agreement of a powersport vehicle dealer is due to a failure to comply with the manufacturer's or distributor's reasonable sales performance criteria, the manufacturer, distributor or franchisor representative shall, at least 135 days prior to sending any notice of termination or nonrenewal described in subsection (b), inform the powersport vehicle dealer in writing of the sales performance deficiency and shall include a specific statement as to what the dealer must achieve in terms of performance in order to cure the deficiency. The writing shall explicitly state that a notice of termination or nonrenewal shall follow should the sales performance deficiency not be cured within the 135 day cure period.

(d) Notwithstanding subsection (b), only 15 days notice before an effective termination date shall be required if:

(1) a motor vehicle dealer's facilities have been abandoned or closed for more than 7 consecutive business days;

(2) a motor vehicle dealer or any dealer principal named in the franchise agreement has pleaded no contest, pleaded guilty to or has been convicted of a felony, whether or not related to the motor vehicle dealer's operation of its dealership;

(3) a motor vehicle dealer becomes insolvent, or any petition is filed by or against a motor vehicle dealer under any bankruptcy or receivership law; or

(4) any license that a motor vehicle dealer is required to have to operate its dealership is revoked, suspended or not renewed.

(e) In no event shall any franchise agreement expire, without the written consent of the motor vehicle dealer involved, before the expiration of the applicable notice period set forth in subsection (b) or (d), as applicable.

(f) Within the applicable notice period set forth in subsections (b) or (d), either the motor vehicle dealer or the manufacturer or distributor may file a complaint in the superior court, or if applicable in the federal district court for the district of Massachusetts, to enforce or enjoin a termination, nonrenewal or renewal upon changes, amendments, additions or deletions of the type described in subsection (a); but nothing contained in this subsection shall relieve a party from the requirements of subsection (b) of section 15. Unless otherwise agreed to in writing by the parties, trial shall be held within 120 days of the expiration of the applicable notice period but not sooner than 90 days after the expiration of the applicable notice period, notwithstanding any standing orders, presumptive time standards, or administrative directives issued or established by the superior court or the federal district court providing for either an earlier or later time for trial. Failure of either party to file a complaint within the time period set forth in subsections (b) and (d) shall bar the filing of a complaint on such grounds at any time in the future. If no protest is filed by any party having received proper notice, or if no injunction is issued during protest litigation, or if the injunction is vacated or dissolved, the termination, nonrenewal or modification may proceed.

(g) The court shall have authority, applying customary standards governing the issuance of injunctive relief in accordance with Massachusetts or Federal Rules of Civil Procedure, as applicable, to enjoin the effective date of the termination or nonrenewal or to enjoin the implementation of a renewal franchise agreement, pending a determination by the trial court of the issues raised by a complaint filed pursuant to subsection (f). Pending a decision by the court on any motion for an injunction, the manufacturer or distributor and motor vehicle dealer shall in good faith perform all obligations incumbent upon them under the franchise agreement and applicable law.

(h) For purposes of this section, good cause may be found if the motor vehicle dealer failed to comply with or observe a provision of the franchise agreement that is material to the franchise relationship, including without limitation, reasonable sales and service performance criteria and capital, personnel, and facility requirements, which were communicated in writing to the motor vehicle dealer within a reasonable period before the effective date of the termination or nonrenewal, such that a reasonable opportunity to cure was afforded.

(i) For purposes of this section, the following conditions shall not constitute good cause:

(1) the motor vehicle dealer's refusal to purchase or accept delivery of any parts, accessories or any other goods, products or services provided or supplied by the manufacturer or distributor which were not ordered or requested;

(2) a manufacturer or distributor requiring, as a term or condition to entering into a renewal franchise agreement, that a motor vehicle dealer or dealer principal relinquish or diminish the extent of any right that exists under an expiring franchise agreement to dual; but if the expiring franchise agreement states that the motor vehicle dealer or dealer principal may not dual, the manufacturer or distributor may require the continuation of the provision as a condition to entering into a renewal franchise agreement.

(j) In determining whether good cause has been established for terminating, refusing to extend or renew or changing or modifying the obligations of the motor vehicle dealer as a condition to offering a renewal,

replacement or succeeding franchise agreement, the court shall consider all pertinent circumstances, that may include, but shall not be limited to:

(1) the amount of business transacted by the affected motor vehicle dealer during the 3 year period immediately preceding such notice as compared to the business available to it;

(2) the investment necessarily made and obligations incurred by the affected motor vehicle dealer to perform its obligations under the existing franchise agreement;

(3) the permanency of the investment of the affected motor vehicle dealer;

(4) whether it is injurious or beneficial to the public welfare for the franchise agreement of the affected motor vehicle dealer to expire, to be modified, or to be terminated, or for the affected motor vehicle dealer to be replaced;

(5) whether the affected motor vehicle dealer has adequate motor vehicle sales and service facilities, equipment, vehicle parts and qualified personnel to reasonably provide for the needs of the consumers for motor vehicles handled by the affected motor vehicle dealer;

(6) whether the affected motor vehicle dealer has been and is rendering adequate services to the public; and

(7) the existence and materiality of any breaches, defaults or violations by the affected motor vehicle dealer of the terms or provisions of the existing franchise agreement or of applicable law.

(k) In the event of a termination of a franchise agreement or cessation of a line make, regardless of cause, the manufacturer or distributor shall:

(1) within 90 days from the effective date of the termination, repurchase all new, unused, undamaged and unaltered motor vehicles of the current model year that it sold to the dealer and any other such vehicles that it sold to the dealer within 180 days before the notice of termination, at a price equal to the amount paid by the motor vehicle dealer including, but not limited to, transportation charges, less all incentives and allowances received by the dealer; provided, however, that the motor vehicles which are recreational vehicles of the current model year and any other recreational vehicles sold to the dealer within 180 days before the notice of termination shall be repurchased; provided, further, that this clause shall not apply to a recreational vehicle manufacturer if the termination was initiated by the dealer for reasons other than the manufacturer’s material breach of contract; and provided, further, that the dealer shall have transferred to the manufacturer or distributor full right and legal title to the vehicles before their repurchase;

(2) if requested by the dealer within the same 90-day period, repurchase all genuine new and unused motor vehicle parts and accessories that it sold to the motor vehicle dealer so long as the parts and accessories are undamaged, in their original packaging and listed in the current parts and accessories price list of the manufacturer or distributor, at a price equal to the wholesale price stated in the current parts and accessories price list of the manufacturer or distributor including, but not limited to, transportation charges, less all incentives and allowances received by the dealer and without reduction for such repurchase or for processing or handling the repurchase; provided, however, that the dealer shall have transferred to the manufacturer or distributor full right and legal title to the equipment before their repurchase;

(3) if requested by the dealer within the same 90-day period, repurchase the new and used equipment that it sold to the motor vehicle dealer within 3 years from the effective date of termination at its then fair market value including, but not limited to, signs, special tools and manuals, which the manufacturer or distributor required the motor vehicle dealer to purchase, the repurchase amount shall include transportation charges assessed on the dealer; provided, however, that the dealer shall have transferred to the manufacturer or distributor full right and legal title to the equipment before their repurchase; and

(4) in the event of a termination that is the result of the cessation of a line make, if requested by the dealer within the same 90-day period, pay: (i) the fair market value of the goodwill of the franchise as of the date immediately preceding the manufacturer or distributor's announcement of a termination or announcement that a line make is being discontinued; and (ii) if the dealer leases the facility from an unrelated and unaffiliated person or entity, the cost of the lease for the facilities used for the franchise or line make for the unexpired term of the lease not to exceed 1 year; provided, however, that if a facility is used for the operation of more than 1 franchise, the reasonable rent owed by the manufacturer shall be based on the portion of the facility utilized by the terminated franchise; provided, further, that the dealer shall attempt in good faith to mitigate the expense by attempting to terminate its lease obligations or to sublease or assign the lease, reimbursing or crediting the manufacturer or distributor for any money received in connection with the termination, sublease or assignment of the lease; provided, further, that the dealer shall provide the manufacturer or distributor with documentation indicating that it has made a good faith effort to terminate its lease obligations and to assign the lease or sublease the space including, but not limited to, a copy of an agreement with a commercial real estate broker to obtain such an assignment or sublease; and (iii) if requested by the manufacturer or distributor, the dealer shall make the facility available to the manufacturer or distributor for use by it or its nominee for a time period equivalent to the time period covered by any such payment from the manufacturer or distributor to the dealer; provided, further, that this clause shall not apply to a termination of a recreational vehicle or a powersport vehicle franchise or a termination of a recreational vehicle or powersport vehicle line make; provided, further, that this clause shall only apply to a manufacturer or distributor that made the decision to terminate or discontinue the line make and shall not impose any obligations on a manufacturer or distributor that was not the decision maker.

(5) This subsection shall not apply in the event of a sale of the assets or stock of a motor vehicle dealership.

(l) In the event that a termination or nonrenewal becomes effective, the former motor vehicle dealer shall immediately cease all use of, and remove from public display, all identifying marks or logotypes which it formerly was permitted to use under the franchise agreement, including but not limited to the prompt removal of signage from the dealership premises.

(m) The burden to establish that a termination, nonrenewal or renewal upon changes, amendments, additions or deletions of the type described in subsection (a) was for good cause shall be upon the manufacturer or distributor. The burden to establish that a termination, nonrenewal or renewal upon changes, amendments, additions or deletions of the type described in subsection (a) was in bad faith, or was in an arbitrary or unconscionable manner, shall be upon the motor vehicle dealer.

History

2002, 222, § 3; 2012, 152, § 5.

Annotations

Notes

Codification

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10

of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Amendment Notes

The 2012 amendment, effective Oct 16, 2012, rewrote (k).

NOTES TO DECISIONS

I. UNDER CURRENT LAW

1. Good cause

Distributor did not violate ALM GL c 93B, § 3 when it terminated a dealership agreement because there was good cause pursuant to both ALM GL c 93B, § 5(h) and (j) given that the agreement specifically required a temporary dealer to build a permanent facility in order to move forward and it did not do so; further, there was no bad faith on the part of the distributor, which simply enforced the agreement. In addition, the distributor gave the dealer many opportunities to cure by offering to extend deadlines. Wagner & Wagner Auto Sales, Inc. v. Land Rover N. Am., Inc., 547 F.3d 38, 2008 U.S. App. LEXIS 23066 (1st Cir. Mass. 2008).

II. UNDER FORMER LAW

3. In general

Where automobile manufacturer refused to approve buyer for franchise but franchisee later transferred dealership with approval of manufacturer and manufacturer's prior refusal did not impair value of dealership, neither franchisee nor first prospective buyer (to whom franchisee's claim was assigned) had claim under ALM GL c 93B against manufacturer. Bishay v. Foreign Motors, Inc., 416 Mass. 1, 616 N.E.2d 96, 1993 Mass. LEXIS 458 (Mass. 1993).

Because an automobile distributor repeatedly offered a dealer the opportunity to extend a contract deadline for building a facility to meet the terms of the parties' letter of intent, reasonable opportunity to cure was amply afforded, and the distributor accordingly did not violate ALM GL c 93B, § 5(h). Wagner & Wagner Auto Sales, Inc. v. Land Rover N. Am., Inc., 539 F. Supp. 2d 461, 2008 U.S. Dist. LEXIS 23167 (D. Mass.), aff'd, 547 F.3d 38, 2008 U.S. App. LEXIS 23066 (1st Cir. Mass. 2008).

Automobile dealer's failure to meet construction and facility completion deadlines constituted "good cause" to terminate the parties' temporary dealer agreement under ALM GL c 93B, § 5(h). Wagner & Wagner Auto Sales, Inc. v. Land Rover N. Am., Inc., 539 F. Supp. 2d 461, 2008 U.S. Dist. LEXIS 23167 (D. Mass.), aff'd, 547 F.3d 38, 2008 U.S. App. LEXIS 23066 (1st Cir. Mass. 2008).

While the court assigned heavy weight to the fact that an automobile dealer materially breached its agreement with a distributor, in determining a summary judgment motion it also considered the other factors for determining good cause to terminate a franchise set forth in ALM GL c 93B, § 5(j). Among other things, the court noted that the dealer had only begun selling the distributor's vehicles in 1999, that its sales numbers were never particularly high, and that the dealer never constructed a permanent facility in which to sell them. Wagner & Wagner Auto Sales, Inc. v. Land Rover N. Am., Inc., 539 F. Supp. 2d 461, 2008 U.S. Dist. LEXIS 23167 (D. Mass.), aff'd, 547 F.3d 38, 2008 U.S. App. LEXIS 23066 (1st Cir. Mass. 2008).

Notes to Unpublished Decisions

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Research References & Practice Aids

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Law Reviews

Mcmillian, What Will It Take to Get You in a New Car Today?: A Proposal for a New Federal Automobile Dealer Act. 45 Gonz. L. Rev. 67 (2009/2010).

Annotations

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 ALR3d 1173.

Damages for wrongful termination of automobile dealership contracts. 54 ALR3d 324.

Validity, construction, and effect of clause in franchise contract prohibiting transfer of franchise or contract. 59 ALR3d 244.

Fraud in connection with franchise or distributorship relationship. 64 ALR3d 6.

Liability for interference with franchise. 97 ALR3d 890.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 ALR4th 624.

Liability of manufacturer under § 2 of the Automobile Dealers Day in Court Act (15 USCS § 1222) for terminating or failing to renew franchise agreement upon dealer's violation of its terms. 50 ALR Fed 245.

Who is "automobile manufacturer" for purposes of the Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.). 51 ALR Fed 812.

Liability of manufacturer under Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.) for failure to perform or comply with terms or provisions of franchise agreement. 54 ALR Fed 314.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

ALM GL ch. 93B, § 6

Current through Chapter 116 of the 2022 Legislative Session of the 192nd General Court

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§ 6. Grant and Relocation of Franchise.

(a) Except as provided in subsection (b) of this section, it shall be a violation of subsection (a) of section 3 for a manufacturer, distributor or franchisor representative without good cause, in bad faith or in an arbitrary or unconscionable manner to:

(1) grant or enter into a franchise agreement with a person who would be permitted under or required by the franchise agreement to conduct its dealership operations from a site any boundary of which is situated within the relevant market area of an existing motor vehicle dealer representing the same line make, regardless of whether said franchise agreement delineates a specific area of responsibility or provides that the area of responsibility of said existing motor vehicle dealer is to be shared or operated in common with others; or

(2) permit the relocation of an existing motor vehicle dealer representing the same line make as another existing motor vehicle dealer to a site any boundary of which is within the relevant market area of an existing motor vehicle dealer which is not relocating, regardless of whether the franchise agreement of either motor vehicle dealer delineates a specific area of responsibility or provides that the area of responsibility of either motor vehicle dealer is to be shared or operated in common with others; but a dealer of the same line make shall not be permitted to file a protest if the site of the proposed relocation is farther away from said protesting dealer than the existing location.

(b) Nothing contained in this section shall prohibit or prevent:

(1) the relocation of an existing motor vehicle dealer to a location within the existing dealer's own relevant market area; if the proposed new location is not within a 4 mile radius of any other same line make motor vehicle dealer unless the site of the proposed relocation is farther away from the protesting dealer than the existing location;

(2) the appointment of a successor motor vehicle dealer at the same location as its predecessor, or within a 2 mile radius from any boundary of the predecessor's former location, but at a location that is not within a 4 mile radius of any boundary of any other same line make motor vehicle dealer unless the site of the proposed location is farther away from the protesting dealer than the existing location, within 1 year from the date on which the predecessor ceased operations or was terminated, whichever occurred later; or

(3) the entering into of a renewal, replacement or succeeding franchise agreement with an existing motor vehicle dealer whose operations will continue at the dealer's then current location. Nothing contained in this paragraph shall relieve a manufacturer or distributor from complying with the provisions of section 5 if the renewal, replacement or succeeding franchise agreement contains any term or condition the effect of which is to substantially change the sales and service obligations, capital requirements or facilities requirements of the motor vehicle dealer, or amends, adds or deletes any other material term or condition set forth in the motor vehicle dealer's franchise agreement.

A motor vehicle dealer shall be limited to a relocation of an existing point under paragraph (1) or to the appointment of a successor at a site under paragraph (2) once within a 2-year period.

(c) Any manufacturer or distributor which intends to grant or enter into an additional franchise agreement or to approve the relocation of an existing dealer, other than an appointment, relocation or renewal of a type described in subsection (b), shall, at least 90 days before granting the additional franchise, entering into the franchise agreement or approving the relocation, send written notice of its intention to do so to each motor vehicle dealer with a franchise agreement covering the same line make into whose relevant market area the proposed new franchise or relocated dealer will be located. The notice shall state the effective date on or after which the proposed franchise shall be granted or entered into or relocation approved, list specific grounds forming the basis for the appointment or relocation based upon information known by the manufacturer or distributor at the time that the notice is sent, and state the address to which any protest hereunder shall be delivered or sent.

(d) Within 45 days after the notice required under subsection (c) has been sent, any motor vehicle dealer into whose relevant market area the additional dealer is to be located or relocated may object to the appointment or relocation, as the case may be, by sending a protest in writing to the location specified in the manufacturer's or distributor's notice. The protest shall list the specific grounds forming the basis for filing the protest based upon information known by the protesting dealer at the time that the protest is sent.

(e) If a written protest is provided by a motor vehicle dealer in the manner and time required by subsection (d), either the motor vehicle dealer or the manufacturer or distributor may file a complaint, within 90 days after the notice required under subsection (c) was sent to the protesting motor vehicle dealer, in the superior court, or if applicable in the federal district court for the district of Massachusetts, to enforce or enjoin the proposed appointment or relocation; but nothing contained in this subsection shall relieve a party from the requirements of subsection (b) of section 15. Unless otherwise agreed to in writing by the parties, trial shall be held within 120 days of the expiration of the notice period set forth in subsection (c) but not sooner than 90 days after the expiration of the notice period, notwithstanding any standing orders, presumptive time standards, or administrative directives issued or established by the superior court or the federal district court providing for either an earlier or later time for holding the trial. Failure of either party to file a complaint within the time period set forth in this subsection shall bar the filing of a complaint on such grounds at any time in the future. If no protest is filed by any party having received proper notice, or if no injunction is issued during protest litigation, or if any such injunction is vacated or dissolved, the appointment or relocation may proceed.

(f) In all judicial proceedings concerning the protest:

(1) the fact that a protesting dealer has standing shall not be considered by the court in assessing the merits of the protest;

(2) the proposed new dealer appointee or proposed relocating dealer, as the case may be, if it so desires, shall be permitted by the court to participate as a party in an ongoing action solely for the purpose of presenting evidence concerning any of the factors listed in subsection (g); but the proposed new dealer appointee or proposed relocating dealer shall not be entitled to initiate a suit or to recover any damages or attorneys' fees pursuant to this chapter; and

(3) the court shall have the authority, applying customary standards governing the issuance of injunctive relief in accordance with Massachusetts or Federal Rules of Civil Procedure, as applicable, to enjoin the proposed appointment or relocation pending a determination by the trial court of the issues raised by a complaint filed pursuant to subsection (e).

(g) In determining whether the proposed appointment or relocation is for good cause, the court shall consider all pertinent circumstances, that include but are not limited to:

(1) whether the establishment of the additional franchise or relocation of the existing motor vehicle dealer appeared to be warranted by economic and marketing conditions including anticipated future changes;

(2) the retail sales and service business transacted by the protesting motor vehicle dealer or dealers and other motor vehicle dealers of the same line make with a place of business in the relevant market area to be served by the additional franchise or proposed new location of an existing motor vehicle dealer during the 3 year period immediately preceding the notice as compared to the business available to them;

(3) the investment necessarily made and obligations incurred by the protesting motor vehicle dealer or dealers to perform their obligations under existing franchise agreements;

(4) the permanency of the investment of the protesting motor vehicle dealer or dealers;

(5) whether it is beneficial or injurious to the public welfare for an additional franchise to be established or for the existing motor vehicle dealer to be relocated;

(6) whether the protesting motor vehicle dealer or dealers and other motor vehicle dealers of the same line make with a place of business in the relevant market area to be served by the additional franchise or proposed relocating motor vehicle dealer are providing adequate competition and convenient consumer care for the motor vehicles of the same line make owned or operated by residents and persons with places of business in the relevant market area to be served by the additional franchise or proposed relocating motor vehicle dealer;

(7) whether the protesting motor vehicle dealer or dealers and other motor vehicle dealers of the same line make with a place of business in the relevant market area to be served by the additional franchise or proposed relocating motor vehicle dealer have adequate motor vehicle sales and service facilities, equipment, vehicle parts and qualified personnel to reasonably provide for the needs of the consumers in the relevant market area to be served by the additional franchise or proposed relocating motor vehicle dealer; and,

(8) whether the establishment of an additional franchise or relocation of an existing motor vehicle dealer would increase competition and therefore be in the public interest.

(h) The burden to establish that a proposed appointment or relocation is for good cause shall be upon the manufacturer or distributor. The burden to establish that a proposed appointment or relocation is in bad faith, or is in an arbitrary or unconscionable manner, shall be upon the protesting motor vehicle dealer.

(i) In the event a dealer is terminated, cancelled or not renewed as a result of the discontinuation of a line make or insolvency of a franchisor, for a period of 2 years from the date that the former franchisee ceased operations, it shall be unlawful for a successor manufacturer or distributor to enter into a same line make franchise as that operated by the former franchisee of the predecessor manufacturer with any person or to permit the relocation of any existing same line make franchise for the same line make represented by the former franchisee that would be located or relocated within the relevant market area of the former franchisee without first receiving written permission to do so from the majority owner of the former franchisee, or the majority owner’s designated successor if the dealer principal of the former franchisee is deceased or disabled. Written permission from the former franchisee shall not be required if: (i) the manufacturer or distributor has offered to reinstate or appoint the former franchisee at no cost and without any requirements or restrictions other than those imposed generally on the manufacturer’s other franchisees at that time and provided that the former franchisee meets the manufacturer’s reasonable requirements for appointment as a dealer; (ii) the manufacturer or distributor has paid the former franchisee or designated successor all termination assistance as required by section 5; (iii) as a result of the former franchisee’s termination of the franchise, the predecessor manufacturer had consolidated the line make with another of its line makes for which the predecessor manufacturer had a franchisee with a then existing dealership facility located within the relevant market area; or (iv) unless the former franchisee was eligible to seek reinstatement of the franchise subject to such termination under section 747 of the Consolidated Appropriations Act, 2010 and for any reason failed to secure such relief; provided, however, that this clause shall not apply to franchisors and franchisees of recreational or powersport vehicles.

History

2002, 222, § 3; 2012, 152, §§ 6, 7.

Annotations

Notes

Codification

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

> SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Amendment Notes

The 2012 amendment, effective Oct 16, 2012, by § 6, added the last paragraph of (b) and by § 7, added (i).

Notes to Decisions

I. UNDER FORMER LAW

1. In general

In an automobile franchisee's action under the Massachusetts Dealer Franchise Act, ALM GL c 93B, § 6, to enjoin the relocation of another franchisee, the automobile manufacturer and the other franchisee were properly granted summary judgment dismissing the action as the suing franchisee could not show it had standing to challenge the proposed relocation, as it could not show the relocation originated from outside its relevant market area. Commonwealth Motors v. Chevrolet Motor Div. of GMC, 15 Mass. L. Rep. 572, 2002 Mass. Super. LEXIS 510 (Mass. Super. Ct. 2002).

ALM GL c 93B, § 6(a)(1), is meant to regulate situations between motor vehicle manufacturers, distributors, and dealers in which additional franchisees are brought into the relevant market area of existing franchisees, and the section renders it illegal for a manufacturer or distributor to arbitrarily and without notice to existing franchisees grant or enter into a franchise or selling agreement to or with an additional franchisee who intends or would be required by such franchise agreement to conduct its dealership operations from a place of business situated within the relevant market area of an existing franchisee or franchisees representing the same line make. Commonwealth Motors v. Chevrolet Motor Div. of GMC, 15 Mass. L. Rep. 572, 2002 Mass. Super. LEXIS 510 (Mass. Super. Ct. 2002).

Purpose of the exemption from review of an automobile franchisee's move under ALM GL c 93B, § 6(b)(2) is relatively clear: to smooth out logistical difficulties which may occur when one franchisee shuts down, perhaps leaving the property tied up and unavailable for a subsequent franchisee, and, in such a situation, it is not considered infringement on nearby market areas to replace the defunct franchisee with a new one located within two miles of where the defunct one previously existed even if, technically, the choice of a new location would step over the line into a third franchisee's relevant market area; the goal is to allow maintenance of competition in the marketplace and reasonable flexibility regarding replacement locations. Commonwealth Motors v. Chevrolet Motor Div. of GMC, 15 Mass. L. Rep. 572, 2002 Mass. Super. LEXIS 510 (Mass. Super. Ct. 2002).

As a matter of law, an automobile franchisee seeking exemption from review of a move of its operations under ALM GL c 93B, § 6(b)(2) under the safe harbor provision is ineligible for that exemption if it is merely relocating its operation. Commonwealth Motors v. Chevrolet Motor Div. of GMC, 15 Mass. L. Rep. 572, 2002 Mass. Super. LEXIS 510 (Mass. Super. Ct. 2002).

Under ALM GL c 93B, § 6(a)(1), automobile dealers only have standing to challenge a proposed grant of a franchise by a manufacturer or distributor to another dealer if the grant would represent the addition of a new franchise to the protesting dealer's "relevant market area" or RMA, and grants outside of the RMA of a particular dealer or relocations of pre–existing dealerships within the RMA of a particular dealer do not confer standing to that dealer; only new grants within the RMA are seen as potentially infringing on an established dealer's reasonable expectations of its market share, and such new grants are made subject to court scrutiny under ALM GL c 93B, § 6(a)(1) to prevent arbitrary actions on the part of the manufacturer or distributor from unfairly impacting established dealers. Commonwealth Motors v. Chevrolet Motor Div. of GMC, 15 Mass. L. Rep. 572, 2002 Mass. Super. LEXIS 510 (Mass. Super. Ct. 2002).

The determination under ALM GL c 93B, § 1, of an automobile franchisee's relevant market area is to be made regardless of whether its franchise or selling agreement delineates or establishes a specific area of responsibility or whether, by custom or usage, a specific area of responsibility has been established. Commonwealth Motors v. Chevrolet Motor Div. of GMC, 15 Mass. L. Rep. 572, 2002 Mass. Super. LEXIS 510 (Mass. Super. Ct. 2002).

Expert's testimony is not necessarily sufficient to resolve whether an automobile dealer has moved within another automobile dealer's relevant market area, contrary to ALM GL c 93B, § 6(a)(1), because it is the role of the court to determine if the expert testimony comports with the Supreme Judicial Court's definition of a relevant market area, regardless of the soundness of the methodology used to collect the data. Commonwealth Motors v. Chevrolet Motor Div. of GMC, 15 Mass. L. Rep. 572, 2002 Mass. Super. LEXIS 510 (Mass. Super. Ct. 2002).

Initial move by a relocating automobile dealer into another dealer's relevant market area (RMA) is the triggering event that confers standing on the second dealer to object to the move, under ALM GL c 93B, § 6(a)(1), for a limited time; later moves within the same dealer's RMA do not renew standing for that dealer since its RMA at that point would in large part coincide with the relocating dealer's. Commonwealth Motors v. Chevrolet Motor Div. of GMC, 15 Mass. L. Rep. 572, 2002 Mass. Super. LEXIS 510 (Mass. Super. Ct. 2002).

Research References & Practice Aids

Research References and Practice Aids

Law Reviews

Criticizing the Economic Analysis of Franchise Encroachment Law. 75 Alb. L. Rev. 205 (2011/2012).

Mcmillian, What Will It Take to Get You in a New Car Today?: A Proposal for a New Federal Automobile Dealer Act. 45 Gonz. L. Rev. 67 (2009/2010).

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

End of Document

ALM GL ch. 93B, § 7

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§ 7. False or Misleading Advertisement Prohibited.

(a) No manufacturer, distributor or dealer shall use any false or misleading advertisement in connection with its business as a manufacturer, distributor or dealer.

(b) Any motor vehicle dealer advertising the price of a new motor vehicle shall include all charges of any type, except taxes, and shall include, without limitation, any charges for freight, handling or preparation necessary or usual before delivery to the consumer.

History

2002, 222, § 3.

Annotations

Notes

Editorial Note—

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

> SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Research References & Practice Aids

Research References and Practice Aids

Code of Massachusetts Regulations

Advertising of motor vehicles. 940 CMR 5.02.

Retail advertising regulations. 940 CMR 6.01–6.02.

Annotations

Regulation or licensing of business of selling motor vehicles. 57 ALR2d 1265.

Validity and construction of statute or ordinance requiring or prohibiting posting or other publication. 89 ALR2d 901.

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 ALR3d 1173.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 ALR3d 740.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 ALR4th 624.

Who is “automobile manufacturer” for purposes of the Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.). 51 ALR Fed 812.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

ALM GL ch. 93B, § 8

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§ 8. Indemnification.

(a) Notwithstanding any terms or provisions of a franchise agreement to the contrary, a manufacturer or distributor shall indemnify its motor vehicle dealers and hold them harmless from and against all damages, liabilities, losses, and reasonable expenses of suit, including reasonable attorneys' fees, arising out of or incurred in the defense of any claim brought by any person seeking compensation or other relief predicated upon the negligent design or manufacture of a new motor vehicle, or any part or component thereof, manufactured or distributed by the manufacturer or distributor where the basis for liability is finally determined by a court to be solely the result of such negligence by manufacturer or distributor and not in any way the result of any fault or neglect on the part of the motor vehicle dealer. The manufacturer or distributor, after having been notified promptly in writing by the motor vehicle dealer that the claim has been asserted and is pending, shall assume the defense thereof and resolve the same at its own expense.

(b) Notwithstanding any terms or provisions of a franchise agreement to the contrary, a motor vehicle dealer shall indemnify the manufacturer of any new motor vehicle purchased or otherwise acquired by the motor vehicle dealer, and any distributor through which it purchased or acquired the same, and hold them harmless from and against all damages, liabilities, losses and reasonable expenses of suit, including reasonable attorneys' fees, arising out of or incurred in the defense of any claim brought by any person seeking compensation or other relief predicated upon the negligent act or omission of the motor vehicle dealer where the basis for liability is finally determined by a court to be solely the result of the negligence of the motor vehicle dealer and not in any way the result of any fault or neglect on the part of the manufacturer or distributor. The motor vehicle dealer, after having been notified promptly in writing by manufacturer or distributor that a claim has been asserted and is pending, shall assume the defense thereof and resolve the same at its own expense.

(c) Any person entitled to indemnification under this section may bring an action in superior court, or if applicable in the federal district court for the district of Massachusetts, by way of original complaint, counterclaim or third–party action. If the court finds for the person, recovery shall be in the amount of actual damages, plus reasonable attorneys' fees and costs; but the person against whom any claim is asserted under this section may tender within 30 days after service of the complaint in the action a written offer of settlement containing specific settlement terms. If the offer of settlement is not accepted within 15 days, and if the court finds that the relief offered was reasonable in relation to the actual damages, not including attorneys' fees and costs, the court award shall not exceed the amount offered.

History

2002, 222, § 3.

Annotations

Notes

Editorial Note—

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

> SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Notes to Decisions

I. UNDER CURRENT LAW

1. Indemnification

Trial court erred by finding that there could be no duty to indemnify or to defend where the claim did not specifically allege negligent design or manufacture. Ferreira v. Chrysler Group LLC, 468 Mass. 336, 13 N.E.3d 561, 2014 Mass. LEXIS 401 (Mass. 2014).

Automobile dealer's cross claim for reimbursement of its attorney's fees and costs of defense was properly denied because the car buyer, both in his demand letter and his complaint, alleged that both the manufacturer and the dealer were at fault. Thus, neither had any duty to defend the other because the conduct of both was at issue based on the buyer's allegations. Ferreira v. Chrysler Group LLC, 468 Mass. 336, 13 N.E.3d 561, 2014 Mass. LEXIS 401 (Mass. 2014).

II. UNDER FORMER LAW

2. In general

Auto dealer could not rely on ALM GL c 93B, § 5B when it was not in effect at time of sale of vehicle in 1970. Fireside Motors, Inc. v. Nissan Motor Corp. (1985) 395 Mass 366, 479 NE2d 1386, 1985 Mass LEX (IS 1627).

ALM GL c 93B, § 5B is not retroactively applicable. Fireside Motors, Inc. v. Nissan Motor Corp. (1985) 395 Mass 366, 479 NE2d 1386, 1985 Mass LEX (IS 1627).

ALM GL c 93B, § 5B has no application where distributor comes in to defend dealer to extent of dealer's vicarious liability for distributor's fault. Fall River Motor Sales, Inc. v. Volkswagen of America, Inc., 15 Mass. App. Ct. 958, 446 N.E.2d 409, 1983 Mass. App. LEXIS 1253 (Mass. App. Ct. 1983).

Research References & Practice Aids

Research References and Practice Aids

Annotations

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 ALR3d 1173.

Liability for representations and express warranties in connection with sale of used motor vehicle. 36 ALR3d 125.

Liability of manufacturer, seller, or distributor of motor vehicle for defect which merely enhances injury from accident otherwise caused. 42 ALR3d 560.

Validity of disclaimer of warranty clauses in sale of new automobile. 54 ALR3d 1217.

Fraud in connection with franchise or distributorship relationship. 64 ALR3d 6.

Products liability: Defective vehicular gasoline tanks. 96 ALR3d 265.

Construction and effect of new motor vehicle warranty limiting manufacturer's liability to repair or replacement of defective parts. 2 ALR4th 576.

Products liability: Automobile manufacturer's liability for injuries caused by repairs made under manufacturer's warranty. 40 ALR4th 1218.

Attorneys' fees in products liability suits. 53 ALR4th 414.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 ALR4th 624.

Who is "automobile manufacturer" for purposes of the Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.). 51 ALR Fed 812.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

ALM GL ch. 93B, § 9

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§ 9. Preparation Work; Express Warranties; Sale Incentives; Audits.

(a) Every manufacturer or distributor shall specify to its motor vehicle dealers the delivery and preparation work, if any, to be performed by its motor vehicle dealers. The compensation provided for the services shall be reasonable.

(b)

(1) A manufacturer or distributor shall specify in writing to each of its dealers the dealer's obligations for predelivery preparation and warranty service on its products and shall compensate the dealer for such preparation and service. A manufacturer or distributor shall within a reasonable time fulfill its obligations under all express warranty agreements made by it with respect to a product manufactured, distributed or sold by it and shall adequately and fairly compensate any motor vehicle dealer who, under its franchise obligations, furnishes labor, parts and materials under the warranty or maintenance plan, extended warranty, certified preowned warranty or a service contract, issued by the manufacturer or distributor or its common entity, unless issued by a common entity that is not a manufacturer; to fulfill a manufacturer or distributor's delivery or preparation procedures or to repair a motor vehicle as a result of a manufacturer or distributor's or common entity's recall, campaign service, authorized goodwill, directive or bulletin. For the purposes of motor vehicle dealers, fair and adequate compensation shall not be less than the rate and price customarily charged for retail customer repairs and computed under paragraph (2); provided, however, that fair and adequate compensation shall, for purposes of this section for powersport vehicles, be computed at the rate normally charged by the motor vehicle dealer to the public for the labor and materials and shall include a fair charge for diagnostic and test services; provided, further, that fair and adequate compensation shall, for purposes of this section for recreational vehicles, be computed at the rate normally charged by the motor vehicle dealer to the public for the labor and shall include a fair charge for diagnostic and test services and shall be computed for the materials at the rate of not less than actual wholesale cost, plus a handling charge of 30 per cent of the cost and the cost, if any, of freight to return the warranty materials to the manufacturer. For the purposes of this subsection, "labor" shall include time spent by employees for diagnosis and repair of a vehicle, "parts" shall include replacement parts and accessories and "retail customer repair" shall mean work, including parts and labor, performed by a dealer which does not come within a manufacturer's, distributor's or its common entity's warranty, extended warranty, certified preowned warranty, service contract or maintenance plan and excludes parts and labor described in clause (iii) of paragraph (2).

(2)

(i) In determining the rate and price customarily charged by the motor vehicle dealer to the public for parts, the compensation may be an agreed percentage markup over the dealer's cost under a writing separate and distinct from the franchise agreement signed after the dealer's request, but if an agreement is not reached within 30 days after a dealer's written request to be compensated under this section, compensation for parts shall be calculated by utilizing the method described in this paragraph.

The retail rate customarily charged by the dealer for parts shall be established by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty or customer-paid service repair orders or 60 consecutive days of nonwarranty, customer-paid service repair orders, whichever is less, each of which includes parts that would normally be used in warranty repairs and covered by the manufacturer's warranty, covering repairs made not more than 180 days before the submission and declaring the average percentage markup. The average of the markup rates shall be presumed to be fair and reasonable. The retail rate shall go into effect 30 days following the declaration, subject to audit of the submitted repair orders by the franchisor and a rebuttal of the declared rate. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on the rebuttal not later than 30 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file an action in a court of competent jurisdiction not later than 30 days after receipt of the proposal by the manufacturer or distributor. In an action commenced under this paragraph, the manufacturer or distributor shall have the burden of proving that the rate declared by the dealer was inaccurate or unreasonable.

(ii) The retail rate customarily charged by the dealer for labor may be established by submitting to the manufacturer or distributor 100 sequential nonwarranty, customer-paid service repair orders or 60 consecutive days of nonwarranty, customer-paid service repair orders, whichever is less, covering repair orders made not more than 180 days before the submission and dividing the amount of the dealer's total labor sales by the number of total labor hours that generated those sales. The average labor rate shall be presumed to be fair and reasonable. The average labor rate shall go into effect 30 days following the declaration, subject to audit of the submitted repair orders by the franchisor and a rebuttal of the declared rate. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average labor rate based on the rebuttal not later than 30 days after submission. If the dealer does not agree with the proposed average labor rate, the dealer may file an action in a court of competent jurisdiction not later than 30 days after receipt of the proposal by the manufacturer or distributor. In any action commenced under this paragraph, the manufacturer or distributor shall have the burden of proving that the rate declared by the dealer was inaccurate or unreasonable.

(iii) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work shall not be included in the calculation: (a) routine maintenance not covered under any retail customer warranty, such as fluids, filters and belts not provided in the course of repairs; (b) items that do not have an individual part number such as some nuts, bolts, fasteners and similar items; (c) tires; and (d) vehicle reconditioning.

(iv) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost, to use in performing repairs under a recall, campaign service action or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the average markup on the cost for the part or component as listed in the manufacturer's or distributor's price schedule less the cost for the part or component.

(v) A manufacturer or distributor shall not require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time consuming to provide including, but not limited to, part-by-part or transaction-by-transaction calculations. A dealer shall not declare an average percentage markup or average labor rate more than once in a calendar year.

(vi) A manufacturer or distributor shall not establish or implement a special part or component number for parts used in predelivery, dealer preparation, warranty, extended warranty, certified preowned warranty, recall, campaign service, authorized goodwill or maintenance-only applications if it results in lower compensation to the dealer than as calculated in this subsection.

(vii) A manufacturer or distributor shall not require, influence or attempt to influence a motor vehicle dealer to implement or change the prices for which it sells parts or labor in retail customer repairs. A manufacturer or distributor shall not implement or continue a policy, procedure or program to any of its dealers in the commonwealth for compensation which is inconsistent with this subsection.

(3) Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed.

(4) All claims by dealers under this subsection for labor and parts and all claims for compensation relative to any sales incentive programs shall be paid not later than 30 days after approval by the manufacturer or distributor; provided, however, that manufacturers or distributors shall retain the right to audit such claims and to chargeback the dealer for false or unsubstantiated claims under this section. Dealers shall be required to maintain defective parts for not longer than 90 days following submission of claims. All such claims shall be either approved or disapproved not later than 30 days after their receipt on forms provided by, and in the manner specified by, the manufacturer or distributor. A claim not disapproved in writing or by means of electronic transmission not later than 30 days after receipt shall be considered approved and payment shall be made within 30 days.

(c) Every manufacturer or distributor shall retain the right to audit claims submitted by a motor vehicle dealer and paid by the manufacturer or distributor for warranty service, parts recall service, and sales incentive, bonus, or other claims relating to the sale of new motor vehicles or services, for 1 year after the date on which a claim is paid or the end of any program period, whichever is later, and to charge back any amounts paid on claims identified in subsections (d) and (e). If there is evidence of fraud or if there has been fraudulent concealment, said manufacturer or distributor shall have a right to audit records for periods exceeding 1 year.

(d) A warranty service or part recall service claim submitted by a motor vehicle dealer and paid by the manufacturer or distributor may be charged back to the motor vehicle dealer only if the claim was fraudulent or false, the repairs were not properly made or were not necessary to remedy the defective condition, or the motor vehicle dealer failed to comply with the reasonable written requirements of the manufacturer or distributor in effect at the time the claim was presented for payment.

(e) A sales incentive, bonus or comparable claim relating to the sale of new motor vehicles or services submitted by a motor vehicle dealer and paid by the manufacturer or distributor may be charged back to the motor vehicle dealer only if the claim was fraudulent or false, the sales were not made, the sales were not timely, or the motor vehicle dealer failed to comply with the reasonable written requirements of the manufacturer or distributor in effect at the time that the claim was presented for payment.

A manufacturer or distributor shall not chargeback a motor vehicle dealer subsequent to the payment of a claim unless a representative of the manufacturer or distributor first meets in person or by video or teleconference with an officer or employee of the dealer or a dealer-designated representative. The unexcused failure or refusal of a dealer or dealer-designated representative to schedule, attend or participate in a meeting with the manufacturer or distributor to which the dealer or dealer-designated representative consented shall relieve the manufacturer or distributor of any further obligation under this subsection; provided, however, that for the purposes of this subsection, an excused failure or refusal of a dealer or a dealer-designated representative to schedule, attend or participate in a meeting with the manufacturer or distributor shall include, but not be limited to: (i) the illness, hospitalization or death of the dealer or the dealer's designee; (ii) the dealer or dealer's designee attending to an emergency or the death of a family member; (iii) the dealer or the dealer's designee attending to an emergency regarding the dealership; (iv) absence caused by military deployment, a weather emergency, an act of God; or (v) the dealer or the dealer's designee attending another dealership-related meeting scheduled by the manufacturer or distributor away from the dealership. At such meeting the manufacturer or distributor shall provide a detailed explanation, with supporting documentation, as to the basis for each of the claims for which the manufacturer or distributor proposed a chargeback to the dealer and a written statement containing the basis upon which the motor vehicle dealer was selected for audit or review. Thereafter, the

manufacturer or distributor shall provide the dealer or the dealer's representative with a reasonable period of time after the meeting within which to respond to the proposed chargebacks, with such period to be commensurate with the volume of claims under consideration, but in no case less than 30 days after the meeting. The manufacturer or distributor shall be prohibited from changing or altering the basis for each of the proposed chargebacks as presented to the dealer or the dealer's representative following the conclusion of the audit unless the manufacturer or distributor receives new information affecting the basis for any of the chargebacks. If the manufacturer or distributor claims the existence of new information, the dealer shall have the same right to a meeting and right to respond as when the chargeback was originally presented.

(f) The persons conducting an audit shall use their best efforts while present at the dealership facility not to unreasonably interfere with the ongoing business of the dealer. All audits shall be completed within a reasonable period of time.

(g) In conducting an audit or examination, the amount of a discrepancy for any period shall not be determined in whole or in part by extrapolating audit or examination results from a prior or subsequent period without the consent of the dealer.

(h) The results of each audit or examination shall be compiled in writing and a copy shall be timely provided to the motor vehicle dealer not later than the time that any charge back occurs. The motor vehicle dealer may protest the results of the audit, including the manner in which it was conducted.

(i) It shall be a violation of subsection (a) of section 3 for any manufacturer or distributor to audit or examine any sales or service account or activity of a motor vehicle dealer as retribution because the motor vehicle dealer exercised any right or remedy under this chapter or exercised any right pursuant to its franchise agreement.

(j) If a motor vehicle dealer is required to file an incentive payment claim with the manufacturer or distributor, then the motor vehicle dealer may submit any such incentive claim at anytime within 6 months after the date of the retail sale or the end of the program period, whichever is later; but if the incentive program does not require the motor vehicle dealer to file any claim form or take any action other than to report retail sales to the manufacturer or distributor, then the manufacturer or distributor may base the incentive payment upon the sales which the motor vehicle dealer timely and accurately reports, as determined by the reasonable written requirements of the manufacturer or distributor in effect at the time that the sales were made, during the period of the incentive program.

History

2002, 222, § 3; 2012, 152, §§ 8, 9.

Annotations

Notes

Editor's Notes

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any

dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Amendment Notes

The 2012 amendment, effective Oct 16, 2012, by § 8, rewrote (b) and by § 9, added the second paragraph of (e).

Notes to Decisions

Regardless of the quality of the re–manufactured pump, the service company was entitled to recover for the work that had been performed pursuant to the distributorship agreement in fixing the truck driver's truck. Andre v. Springfield Mack, Inc., 2004 Mass. App. Div. 3, 2004 Mass. App. Div. LEXIS 2 (Mass. App. Div. 2004).

Research References & Practice Aids

Research References and Practice Aids

Law Reviews

Mcmillian, What Will It Take to Get You in a New Car Today?: A Proposal for a New Federal Automobile Dealer Act. 45 Gonz. L. Rev. 67 (2009/2010).

Annotations

Regulation or licensing of business of selling motor vehicles. 57 ALR2d 1265.

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 ALR3d 1173.

Liability for representations and express warranties in connection with sale of used motor vehicle. 36 ALR3d 125.

Liability of manufacturer, seller, or distributor of motor vehicle for defect which merely enhances injury from accident otherwise caused. 42 ALR3d 560.

Damages for wrongful termination of automobile dealership contracts. 54 ALR3d 324.

Validity of disclaimer of warranty clauses in sale of new automobile. 54 ALR3d 1217.

Validity, construction, and effect of clause in franchise contract prohibiting transfer of franchise or contract. 59 ALR3d 244.

Fraud in connection with franchise or distributorship relationship. 64 ALR3d 6.

Scope and exemptions of state deceptive trade practice and consumer protection acts. 89 ALR3d 399.

Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Products liability: Defective vehicular gasoline tanks. 96 ALR3d 265.

Liability for interference with franchise. 97 ALR3d 890.

Construction and effect of new motor vehicle warranty limiting manufacturer's liability to repair or replacement of defective parts. 2 ALR4th 576.

Products liability: Automobile manufacturer's liability for injuries caused by repairs made under manufacturer's warranty. 40 ALR4th 1218.

Liability for delay in making repair of motor vehicle. 44 ALR4th 1174.

Attorneys' fees in products liability suits. 53 ALR4th 414.

Coverage of insurance transactions under state consumer protection statutes. 77 ALR4th 991.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 ALR4th 624.

Coverage of leases under state consumer protection statutes. 89 ALR4th 854.

Who is a "consumer" entitled to protection of state deceptive trade practice and consumer protection acts. 63 ALR5th 1.

Who is "automobile manufacturer" for purposes of the Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.). 51 ALR Fed 812.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

ALM GL ch. 93B, § 10

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§ 10. Restrictions; Coercion Prohibited.

(a) It shall be unlawful for a manufacturer or distributor, directly or indirectly, to coerce a motor vehicle dealer to agree to any restrictions relative to transfer, sale, ability to renew, termination, discipline, noncompetition covenants, site control, whether by sublease, collateral pledge of lease, or otherwise, right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights. A refusal by a dealer to grant the restrictions to a manufacturer or distributor shall not be a basis for the manufacturer or distributor to deny an appointment to a new dealer, renewal to an existing dealer or relocation of a dealer's facilities to an existing dealer; but if the dealer has previously and voluntarily granted any of these rights, the manufacturer or distributor may require the terms in a renewal of a franchise agreement.

(b) Nothing contained in subsection (a) shall prevent a motor vehicle dealer and a manufacturer or distributor from freely and voluntarily entering into an agreement containing the restrictions. If a manufacturer or distributor exercises a right of first refusal over a franchise or facilities as described in this subsection, the manufacturer or distributor shall notify the dealer in writing within 45 days of the receipt of the dealer's completed proposal for the transfer, assignment or sale, of its intention to exercise its right of first refusal. Within 30 days of the date of issuance of the notice of intent, the manufacturer or distributor shall exercise the right of first refusal or it shall be considered waived. The manufacturer or distributor shall reimburse all reasonable costs and expenses incurred by the proposed owner or transferee before the new motor vehicle dealer's receipt of the manufacturer or distributor's notice of intent to exercise its right of first refusal. The exercise of the right of first refusal shall result in the dealer and dealer's owners receiving consideration, terms, and conditions that are either the same as or greater than that which they have contracted to receive in connection with the proposed change or transfer. The manufacturer or distributor shall not exercise any right of first refusal over a sale by the motor vehicle dealer to a co–owner of the dealership, to a member of the management of the dealership who was previously approved by the manufacturer or distributor as a management employee, or to an immediate family member of the dealer or co–owner; but nothing contained in this subsection shall relieve a manufacturer or distributor from complying with paragraph (8) of subsection (c) of section 4 if a right of first refusal is not exercised in accordance with this subsection, nor relieve a motor vehicle dealer from complying with paragraph 3 of subsection (d) of said section 4.

(c) It shall be a violation of subsection (a) of section 3 for a manufacturer or distributor to falsely express an intention to exercise a right of first refusal or other right to acquire a motor vehicle dealership from a dealer as a means to influence the consideration or other terms offered by a person in connection with the acquisition of the motor vehicle dealership or to influence a person to refrain from entering into, or to withdraw from, negotiations for the acquisition of the motor vehicle dealership.

(d) A motor vehicle dealer's financial data shall, except for compliance with applicable law or in use in judicial or administrative proceedings, remain the property of the motor vehicle dealer and shall not be made publicly available by the manufacturer or distributor in a manner that identifies the dealer that provided the financial data without the written consent of said dealer.

History

2002, 222, § 3.

Annotations

Notes

Editorial Note—

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

> SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Research References & Practice Aids

Research References and Practice Aids

Law Reviews

Mcmillian, What Will It Take to Get You in a New Car Today?: A Proposal for a New Federal Automobile Dealer Act. 45 Gonz. L. Rev. 67 (2009/2010).

Annotations

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 ALR3d 1173.

Damages for wrongful termination of automobile dealership contracts. 54 ALR3d 324.

Validity, construction, and effect of clause in franchise contract prohibiting transfer of franchise or contract. 59 ALR3d 244.

Fraud in connection with franchise or distributorship relationship. 64 ALR3d 6.

Liability for interference with franchise. 97 ALR3d 890.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 ALR4th 624.

Who is “automobile manufacturer” for purposes of the Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.). 51 ALR Fed 812.

Liability of manufacturer under Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.) for failure to perform or comply with terms or provisions of franchise agreement. 54 ALR Fed 314.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

ALM GL ch. 93B, § 11

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§ 11. Applicability of Chapter.

This chapter shall apply to all actions by a manufacturer or distributor which relate to the franchise relationship and which arise under any written or oral agreement between the manufacturer or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements in which said manufacturer or distributor has any direct or indirect interest.

History

2002, 222, § 3.

Annotations

Notes

Editorial Note—

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Notes to Decisions

I. UNDER CURRENT LAW

1. In general

Summary judgment was granted against a dealer's claims under ALM GL c 93B, § 11 where the dealer identified no substantive provision of ALM GL c 93B that was breached by a car manufacturer. Motorsport Eng'g, Inc. v. Maserati S.p.A., 316 F.3d 26, 2002 U.S. App. LEXIS 26373 (1st Cir. Mass. 2002).

II. UNDER FORMER LAW

In general

Auto franchiser's failure to forward copy of franchise agreement to Attorney General and to motor vehicle dealer did not void terms of written agreement and make oral franchise arrangement continue, rather it would have effect of depriving franchiser of benefits of agreement until 90 days after formal notification, as required, was given. Truck Center, Inc. v. Freightliner Corp., 754 F. Supp. 3, 1990 U.S. Dist. LEXIS 18068 (D. Mass. 1990).

Research References & Practice Aids

Research References and Practice Aids

Annotations

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 ALR3d 1173.

Damages for wrongful termination of automobile dealership contracts. 54 ALR3d 324.

Validity, construction, and effect of clause in franchise contract prohibiting transfer of franchise or contract. 59 ALR3d 244.

Fraud in connection with franchise or distributorship relationship. 64 ALR3d 6.

Liability for interference with franchise. 97 ALR3d 890.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 ALR4th 624.

Who is "automobile manufacturer" for purposes of the Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.). 51 ALR Fed 812.

Liability of manufacturer under Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.) for failure to perform or comply with terms or provisions of franchise agreement. 54 ALR Fed 314.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

End of Document

ALM GL ch. 93B, § 12

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§ 12. Franchise; Periodic Renewal.

If a manufacturer or distributor renews its franchise agreements periodically, it shall do so as their contractual periods expire on terms equally available to all of its motor vehicle dealers in the commonwealth unless there is good cause to do otherwise. Any notification provided by a manufacturer or distributor to the effect that the market being served by a motor vehicle dealer is not considered viable in the future shall be void and unenforceable.

History

2002, 222, § 3.

Annotations

Notes

Editorial Note—

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Research References & Practice Aids

Research References and Practice Aids

Law Reviews

Tesla Unplugged: Automobile Franchise Laws and the Threat to the Electric Vehicle Market. 18 Va. J.L. & Tech. 185 (Winter, 2013-2014).

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

End of Document

ALM GL ch. 93B, § 13

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§ 13. Right of Free Association.

Every manufacturer, distributor, and motor vehicle dealer shall have the right of free association with other manufacturers, distributors, or motor vehicle dealers for any lawful purpose.

History

2002, 222, § 3.

Annotations

Notes

Editorial Note—

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Research References & Practice Aids

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

End of Document

ALM GL ch. 93B, § 14

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§ 14. Enforcement.

Upon the written request of a motor vehicle dealer, manufacturer or distributor, the attorney general may enforce compliance with this chapter in accordance with sections 4 to 8, inclusive, of chapter 93A.

History

2002, 222, § 3.

Annotations

Notes

Editorial Note—

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Notes to Decisions

I. UNDER FORMER LAW

In general

Legislature purposely excluded provision for injunctive relief to motor vehicle dealer in ALM GL c 93B, § 12. Reiter Oldsmobile, Inc. v. General Motors Corp., 378 Mass. 707, 393 N.E.2d 376, 1979 Mass. LEXIS 894 (Mass. 1979).

Remedies given motor vehicle dealer or franchisee by ALM GL c 93B are only remedies available for violation of chapter 93B. Reiter Oldsmobile, Inc. v. General Motors Corp., 378 Mass. 707, 393 N.E.2d 376, 1979 Mass. LEXIS 894 (Mass. 1979).

Intention of legislature was to protect motor vehicle franchisees and dealers from type of injury to which they had been susceptible by virtue of inequality of their bargaining power and that of their affiliated manufacturers and distributors. Beard Motors, Inc. v. Toyota Motor Distributors, Inc., 395 Mass. 428, 480 N.E.2d 303, 1985 Mass. LEXIS 1713 (Mass. 1985).

Prospective purchaser of motor vehicle dealership whose injuries for manufacturer's refusal to consent to transfer would include loss of anticipated profits and of capital appreciation in value of dealership would not sustain injuries within area of legislative concern that resulted in enactment of ALM GL c 93B, § 4(3)(i). Beard Motors, Inc. v. Toyota Motor Distributors, Inc., 395 Mass. 428, 480 N.E.2d 303, 1985 Mass. LEXIS 1713 (Mass. 1985).

Attorney General has authority to invoke ALM GL c 93A, §§ 4–8 against new car dealer. Commonwealth v. Wellesley Toyota Co., 18 Mass. App. Ct. 733, 470 N.E.2d 142, 1984 Mass. App. LEXIS 1739 (Mass. App. Ct. 1984).

Research References & Practice Aids

Research References and Practice Aids

Annotations

Damages for wrongful termination of automobile dealership contracts. 54 ALR3d 324.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

ALM GL ch. 93B, § 15

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§ 15. Damages and Equitable Relief.

(a) Any manufacturer, distributor or motor vehicle dealer who suffers any loss of money or property, real or personal, as a result of the use or employment by a manufacturer, distributor or motor vehicle dealer of an unfair method of competition or an unfair or deceptive act or practice as defined by this chapter, any act prohibited or declared unlawful by this chapter, or any rule or regulation adopted under this chapter, may bring an action in the superior court, or if applicable in the federal district court for the district of Massachusetts, for damages and equitable relief, including injunctive relief, as described in the following sentence: The party filing suit may obtain equitable relief if it can be demonstrated: (1) that the unfair method of competition, deceptive act or practice, or violation if not enjoined would have a substantial likelihood of causing loss of money or property or of causing damage to the public, and (2) that all other customary standards governing the issuance of injunctive relief in accordance with Massachusetts or Federal Rules of Civil Procedure, as applicable, are met.

(b) Before filing suit under any section of this chapter except section 8, all parties to the dispute shall meet and confer for purposes of discussing settlement. Failure to do so may be deemed evidence during any court proceeding of bad faith on the part of the party making no reasonable effort, or ignoring others' efforts, to confer. If the party prevailing in the suit made no reasonable effort, or ignored others' efforts, to so confer, the party shall be prohibited from collecting an award of attorneys' fees as described in subsection (c).

(c) If the prevailing party in any action or protest brought under this chapter successfully demonstrates to the court that the actions, claims or defenses of the other party were asserted in bad faith, then the court shall, in addition to other relief provided for by this chapter and notwithstanding the amount in controversy and whether the prevailing party has sustained any actual damage, award to the prevailing party its reasonable costs of suit, including reasonable attorneys' fees.

(d) Any person against whom any claim is asserted under this section may tender within 30 days after service of the complaint in the action a written offer of settlement containing specific settlement terms. If the offer of settlement is not accepted within 15 days by the other person, and the court finds that the relief offered was reasonable in relation to the injury actually suffered, not including attorneys' fees and costs, the court award shall not exceed the offer. This subsection shall limit any award of attorneys' fees or costs awarded pursuant to subsection (c).

(e) The rights and remedies provided for in this chapter shall be the exclusive rights and remedies available under state law arising out of a violation of this chapter. Notwithstanding any term or provision of a franchise agreement to the contrary: (1) the laws of the commonwealth shall govern the interpretation of the franchise agreement of a motor vehicle dealer located in the commonwealth and the performance of the parties thereunder, and (2) the courts of the commonwealth and the federal courts with jurisdiction over cases filed in the district of Massachusetts shall have exclusive jurisdiction with respect to any action brought under this chapter or any action brought by a manufacturer, distributor or motor vehicle dealer concerning the franchise of a motor vehicle dealer located in the commonwealth.

History

2002, 222, § 3.

Annotations

Notes

Editorial Note—

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

> SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Notes to Decisions

I. UNDER FORMER LAW

In general

Prospective purchaser of motor vehicle dealership does not have standing under ALM GL c 93B, § 12A to bring action against motor vehicle distributor who unreasonably withholds consent to transfer of prospective seller's franchise in violation of ALM GL c 93B, § 4(3)(i). Beard Motors, Inc. v. Toyota Motor Distributors, Inc., 395 Mass. 428, 480 N.E.2d 303, 1985 Mass. LEXIS 1713 (Mass. 1985).

Where automobile manufacturer refused to approve buyer for franchise but franchisee later transferred dealership with approval of manufacturer and manufacturer's prior refusal did not impair value of dealership, neither franchisee nor first prospective buyer (to whom franchisee's claim was assigned) had claim under ALM GL c 93B against manufacturer. Bishay v. Foreign Motors, Inc., 416 Mass. 1, 616 N.E.2d 96, 1993 Mass. LEXIS 458 (Mass. 1993).

Statute expressly grants rights as private attorneys general. Local 1445, United Food & Commercial Workers Union v. Police Chief of Natick, 29 Mass. App. Ct. 554, 563 N.E.2d 693, 1990 Mass. App. LEXIS 631 (Mass. App. Ct. 1990).

Right to recover legal expenses under ALM GL c 93B, § 12A refers to action for damages commenced under ALM GL c 93B, § 12A and not to procedure under ALM GL c 93B, § 4(3)(l) under which motor vehicle manufacturers and dealers can determine if proposed new dealership would unfairly poach on existing dealership's territory. Richard Lundgren, Inc. v. American Honda Motor Co., 45 Mass. App. Ct. 410, 699 N.E.2d 11, 1998 Mass. App. LEXIS 976 (Mass. App. Ct. 1998).

Where motor vehicle manufacturer had notified motor vehicle dealer of its intent to establish new dealership in nearby community and dealer brought action to have proposed franchise declared "arbitrary" under ALM GL c 93B, § 4(3)(l), judge's finding that new dealership would be arbitrary in sense of statute did not constitute violation of statute by manufacturer; therefore, judge's award of legal fees and costs was not warranted. Richard Lundgren, Inc. v. American Honda Motor Co., 45 Mass. App. Ct. 410, 699 N.E.2d 11, 1998 Mass. App. LEXIS 976 (Mass. App. Ct. 1998).

Attorney's fees will not be awarded to forklift dealer, even though it proved unfair business practices in violation of ALM GL c 93B, § 12A, where jury awarded it no damages since it successfully mitigated all loss by acquisition of another dealership, because attorney's fees may be awarded under statute only "in addition to any other relief provided for." Cooney Indus. Trucks, Inc. v. Toyota Motor Sales, U.S.A., Inc., 168 F.3d 545, 1999 U.S. App. LEXIS 3037 (1st Cir. Mass. 1999).

Reconsideration of request of ALM GL c 93B plaintiff for attorney's fees is denied, where jury correctly determined that plaintiff substantially benefited rather than sustained any loss or harm from accepting anticompetitive franchise, because plaintiff must be entitled to relief in some other respect in order to be entitled to award of attorney's fees under ALM GL c 93B, § 12A. Cooney Indus. Trucks v. Toyota Motor Sales, U.S.A., 978 F. Supp. 391, 1997 U.S. Dist. LEXIS 14228 (D. Mass. 1997), aff'd, 168 F.3d 545, 1999 U.S. App. LEXIS 3037 (1st Cir. Mass. 1999).

Research References & Practice Aids

Research References and Practice Aids

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Mcmillian, What Will It Take to Get You in a New Car Today?: A Proposal for a New Federal Automobile Dealer Act. 45 Gonz. L. Rev. 67 (2009/2010).

Tesla Unplugged: Automobile Franchise Laws and the Threat to the Electric Vehicle Market. 18 Va. J.L. & Tech. 185 (Winter, 2013-2014).

Annotations

Damages for wrongful termination of automobile dealership contracts. 54 ALR3d 324.

Fraud in connection with franchise or distributorship relationship. 64 ALR3d 6.

Reasonableness of offer of settlement under deceptive trade practice and consumer protection acts. 90 ALR3d 1350.

Liability for interference with franchise. 97 ALR3d 890.

Award of attorneys' fees in actions under state deceptive trade practice and consumer protection acts. 35 ALR4th 12.

Attorneys' fees as recoverable in fraud action. 44 ALR4th 776.

Liability of manufacturer under Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.) for failure to perform or comply with terms or provisions of franchise agreement. 54 ALR Fed 314.

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

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ALM GL ch. 93B, § 16

Current through Chapter 116 of the 2022 Legislative Session of the 192nd General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE XV REGULATION OF TRADE (Chs. 93 - 110H) > TITLE XV REGULATION OF TRADE (Chs. 93 — 110H) > Chapter 93B Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers (§§ 1 — 18)

§ 16. Contracts in Violation of Chapter Void.

(a) Any provision of a franchise agreement or practice thereunder in violation of this chapter shall be against public policy and shall be void and unenforceable.

(b) A clause or provision in a franchise agreement requiring the parties to submit to arbitration, mediation or any other alternative dispute resolution mechanism before filing suit shall be enforceable only if the parties have voluntarily entered into an agreement to submit to arbitration, mediation or any other alternative dispute resolution mechanism, and the matter is conducted at a reasonable location within the commonwealth; provided, however, that the provisions of this subsection shall not prohibit the enforceability of a clause or provision in a franchise agreement which requires the parties to submit to non–binding mediation; and provided, further, that said non–binding mediation is conducted at a reasonable location within the commonwealth.

History

2002, 222, § 3.

Annotations

Notes

Editorial Note—

Acts 2002, 222, § 3, effective Sept 1, 2002, enacted this section. Section 5 provides:

SECTION 5. This act shall apply to all franchise agreements existing on or after the effective date of this chapter; provided, however, that clause (10) of subsection (c) of section 4 of chapter 93B of the General Laws, inserted by section 3 of this act, shall not apply to bona fide written agreements for the ownership of a dealership which were executed before the effective date of this chapter; provided, further, that section 10 of said chapter 93B shall not apply to agreements relative to site control and the right of first refusal which were executed before the effective date of this act; and provided, further, that this act shall not apply to any dispute between a motor vehicle dealer and a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division that has arisen pursuant to and is governed by paragraph (1) of subsection (3) of section 4 of said chapter 93B as constituted before the effective date of this act for which notice by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to enter into an additional franchise or selling agreement has or should have been delivered, as required by said paragraph (1), before the effective date of this act to the motor vehicle dealer to whom the notice was required to be given.

Research References & Practice Aids

Hierarchy Notes:

ALM GL Pt. I, Title XV, Ch. 93B

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