

MAINE MOTOR VEHICLE FRANCHISE BOARD

Darling's)
)
 Petitioner,)
v.)
) M.V.F. Bd. No. 13-01
 FCA USA, LLC,)
)
 Respondent)

CORRECTED ORDER ON REMAND

The Business and Consumer Court REMANDED this matter to the Board on 27 June 2016, to determine the Civil Penalty it would impose on FCA for the four violations of 10 M.R.S.A. 1176, which the Court had sustained. The Chair held Conferences of Counsel on 30 June 2016 and 17 October 2016; a 15 November 2016 ORDER directed FCA to file a Brief on Civil Penalties, as had Darling's on 31 October 2016.

On November 1, 2016, the Chair sent Board members William Dowling, Charles Gaunce, William Sowles, Donald Lee, and Jill Goodwin, copies of §1171(B)3 of the Act, along with a copy of the Board's April 4, 2014 Decision, and pages 53 through 74 of its January 7, 2014 Deliberations. Manufacturer Member John Knight received copies of the statute and Decision, but also received the full transcript of the Deliberations since he had not taken part in them. Following the November ORDER, on November 17, the Chair sent all of the Board Members the Business Court's June 27, 2016 Order and Darling's Brief on Civil Penalties as well as FCA's Brief on Civil Penalties for Count III; FCA's Exhibits A, B and C, attached to its Brief (Docket 9, Ex. A-C), were not sent then since those documents had been sent to the Board on 1 November.

The Board members listed above met on 28 November 2016, to determine amount of the Civil Penalty. Counsel Judy Metcalf and Noreen Patient were present for Darling's and attorneys Robert Cultice and Daniel Rosenthal appeared for FCA. Neither the parties nor the Board had arranged for a record to be made, and the Chair DENIED Attorney Metcalf's request that the

deliberations be recorded. The Chair submitted as Board Exhibit 1, the six documents listed above which had earlier been sent to the sitting Board Members, with a cover memo, given to counsel and labeled Page 1 of Board 1, listing the documents the Chair had sent to the sitting Board Members on November 1 and 17, and explaining that John Knight would deliberate on the Remand, replacing Russ McLellan who had sat on the original hearing and deliberations, and Having considered those documents, the Board heard the arguments of counsel and deliberated on 28 November 2016.

Based upon the factors listed in the statute, Board Members proposed several amounts for the four violations. Mr. Dowling suggested Civil Penalties of \$20,000; Mr. Gaunce suggested that \$33,336 was a more appropriate penalty; Ms. Goodwin favored the original penalty imposed by the Board, \$1,000 for each of the violations, for a total penalty of \$4,000; Mr. Lee and Mr. Sowles proposed the maximum penalty of \$40,000, for the four violations, and Mr. Knight did not propose a penalty amount during the discussions. Motions to impose Penalties of \$20,000, and \$33,336, did not gain a majority, but five Board Members voted to assess Civil Penalties of \$40,000, with Ms. Goodwin opposed.

WHEREFORE, a Civil Penalty of \$40,000 is imposed on FCA for the four violations of Title 10 M.R.S.A. § 1171 et seq.

So ORDERED

Dated 16 December 2016

/s/ John McCurry
John McCurry, Esq., Chairman,
Maine Motor Vehicle Franchise Board