**MAINE MOTOR VEHICLE FRANCHISE BOARD**

DARLING’S d/b/a )

DARLING’S BANGOR FORD )

)

Petitioner, )

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v. ) M. M.V. F. Bd. No. 17-01

)

) COUNT VII

)

FORD MOTOR COMPANY )

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Respondent. )

Pending before the Maine Motor Vehicle Franchise Board (hereinafter the Board) is Count VII of Darling's petition filed with the Board on March 14, 2017. The Board heard Count VII after it Denied Count I on March 18, 2019. Darling’s filed an October 29, 2019, MOTION for SUMMARY JUDGMENT, STATEMENT of MATERIAL FACTS IN SUPPORT of the MOTION, EXHIBITS , and AFFIDAVIT of JOHN DARLING, and PROPOSED ORDER on MOTION, UNDER SEAL; also on October 29, 2019, FORD filed a MOTION for SUMMARY JUDGMENT, MVFB ORDER of 16 May 2017, FORD’S MEMORANDUM of LAW SUPPORT of its MOTION for SUMMARY JUDGMENT, FORD’S STATEMENT OF MATERIAL FACTS, EXHIBITS SUPPORTING FORD’S SUMMARY JUDGMENT FILINGS, UNDER SEAL; on November 12, DARLING’S filed its OPPOSITION and STATEMENT of MATERIAL FACTS in OPPOSITION to FORD’S MOTION for SUMMARY JUDGMENT and REPLY STATEMENT OF MATERIAL FACTS with EXHIBITS; ALSO ON November 12, FORD filed its OPPOSITION to DARLINGS MOTION SUMMARY JUDGMENT, OPPOSITION STATEMENT OF MATERIAL FACTS and additional STATEMENT OF MATERIAL FACTS w/ EXHIBITS;. November 26, FORD filed its REPLY to DARLING’S OPPOSITION to FORD’S MOTION for SUMMARY JUDGMENT on COUNT VII,FORD’S OPPOSING STATEMENT of MATERIAL FACTS in RESPONSE to DARLING’S REPLY STATEMENT of MATERIAL FACTS with supporting EXHIBITS; on November 26, DARLING’S filed its REPLY to FORD’S OPPOSITION to its MOTION for SUMMARY JUDGMENT on COUNT VII; DARLING’S REPLY STATEMENT MATERIAL FACTS AFFIDAVIT Judy A.S. Metcalf; DARLING’S REPLY to FORD’S OBJECTIONS to STATEMENT of MATERIAL FACTS; on December 3, DARLING’S filed its RESPONSE TO FORD’S OBJECTIONS TO DARLING’S REPLY STATEMENT OF FACTS; on December 19, the BOARD DENIED DARLING’S MOTION for SUMMARY JUDGMENT.

On January 14, DARLING’S filed its MOTION FOR RECONSIDERATION; January 18, FORD filed its MOTION FOR ENLARGEMENT OF TIME; February 5, FORD filed its RESPONSE to DARLING’S MOTION FOR RECONSIDERATION, RESPONSE to DARLING’S MOTION TO AMEND BOARD’S MAY 16, 2017, ORDER SEALING COUNT VII OF COMPLAINT; and on February 5, DARLING’S filed its MOTION TO FILE REPLIES TO FORD’S “RESPONSES” to DARLING’S PENDING MOTIONS; on February 18, DARLING’S filed its REPLY to , FORD’S RESPONSE to DARLING’S MOTION FOR RECONSIDERATION; and on June 4, the Board ORDER ON RECONSIDERATION OF MOTIONS FOR SUMMARY JUDGMENT, GRANTING DARLING’S MOTION.

On July 17, FORD filed its BRIEF REGARDING the LAW APPLICABLE TO CIVIL PENALTIES, and DARLING’S filed its BRIEF IN SUPPORT OF MULTIPLE CIVIL PENALTIES; on August 5, the BOARD issued an ORDER ON CIVIL PENALTIES *finding Ford had violated the statute twenty four times.*; on August 17, DARLING’S submitted a DEMONSTRATIVE AID TO ARGUMENT *recounting Ford,s violations of the Dealer’s Act between 1996 and 2018*; on August 26, FORD filed its OBJECTION TO DARLING’S DEMONSTRATIVE AID TO ARGUMENT and Ford and Darling’s sent a LETTERS on DARLING’S DEMONSTRATIVE AID TO ARGUMENT. During an August 28, 2020, phone conference, the Board DENIED Ford’s OBJECTION; the Chairman Mailed an edited SUMMARY JUDGMENT ORDER AS AMENDED AND A COPY OF SEC. 1171-B, to BOARD MEMBERS.

A PUBLIC MEETING of the BOARD, scheduled for August 31, 2020 was cancelled because of a case of covid at the BMV office in Augusta. It was rescheduled as a virtual meeting starting at 9:30 on October 8, with the following present. Attorneys Noreen Patient and Judy Metcalf represented Darlings; Attorneys Dan Rosenthal and Michael Cooney represented Ford; Lance Mosely attended for Ford and John Darling for Darling’s. Attorney Patient asked the Board to impose $10,000 penalties for each violation; attorney Cooney argued the facts did not warrant the maximum penalty. Board members Charles Gaunce, Stacy Chandler, Jill Goodwin, and Steven Hartley who attended remotely on ZOOM, with Ben Luja and John McCurry at the Augusta office.

Charles Gaunce stated that the maximum penalty was warranted by the facts and by Ford’s earlier violations of the law; Stacy Chandler agreed with Mr. Gaunce, as did Ben Luja. The Board Members were aware that the facts before them differed from Ford’s earlier violations. Steve Hartley did not favor the amount of the penalty because of its possible affect on the cost of doing business in Maine. Jill Goodwin was initially uncertain whether the Board should impose the maximum penalty, but she soon agreed with the members who voted for that result, which was based upon previous violations and the amount necessary to deter future violations. By a vote of four to one, the Board agreed upon a $10,000 penalty for each of Ford’s twenty- four violations.

WHEREFORE;

Ford is assessed a civil penalty of $240,000, payable to the Highway Fund under §1171-B(3) for violations of the Dealer’s Act.

SO ORDERED. October 14, 2020

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Chairman, Maine Motor Vehicle Franchise Board