

**MAINE MOTOR VEHICLE FRANCHISE BOARD**

DARLING’S d/b/a )  
DARLING’S BANGOR FORD )  
 )  
Petitioner, )  
 )  
v. ) M. M.V. F. Bd. No. 17-01  
 )  
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 )  
FORD MOTOR COMPANY )  
 )  
Respondent. )

Pending before the Maine Motor Vehicle Franchise Board (hereinafter the Board) is Darling's petition filed with the Board on March 14, 2017. Count I asks the Board to determine whether there “is good cause for permitting the proposed modification,” under 10 M.R.S.A. § 1174(3) (B). Darling’s filed the petition in response to Ford’s certified mail letter of December 19, 2016, in which Ford proposed to end payments owed to Darling’s under Ford’s Blue Oval Certified Program (hereinafter BOC). On May 3, 2017, Ford answered the petition. MADA’s May 24, 2017 motion to intervene was GRANTED over Ford’s objection on June 12, 2017.

The Law Court decisions describe the background to this matter. *Ford Motor Company v. Darling’s et al.*, 2014 ME 7, (*Ford I*) and *Ford Motor Company v. Darling’s et al.*, 2016 ME 171, (*Ford II*). The Board will not repeat that history here.

Given that history, the parties disagreed on whether the Board would determine “good cause” for the modification based upon the facts existing in April 2005, or December 2016. The Board ruled on October 17, 2017, that good cause for the modification would be determined as of April 1, 2005, when Ford illegally ended BOC payments to Darling’s by failing to give that dealership notice by certified mail as required by Tit. 10 § 1174(3)(B). Upon Darling’s request for reconsideration of that ruling, the undersigned reversed that earlier ruling on May 26, 2018, and held that the Board would determine good cause under the Act as of December 2016, when Ford legally notified Darling’s by certified mail that it intended to end the BOC payments 90 days from Darling’s receipt of the letter. That ruling was later clarified to provide that the Board’s “good cause” determination would consider the parties’ situation between January 2014, and December 19, 2016, and the history set out in *Ford I and Ford II*.

Attorneys Noreen Patient and Judy Metcalf represented Darlings; Matt Warner represented the Maine Auto Dealers Association (hereinafter MADA); and Daniel Rosenthal, Michelle I. Schaffer, James M. Campbell, Curtis A. Berglund, and Jessica Ellsworth Represented Ford.

John Darling, Jay Darling, and an expert witness, Tim Dougherty, testified for Darling’s; Patrick Anderson offered expert testimony for MADA; Megan Carlini, David Comfort, and Rodney Crawford, an expert witness, testified for Ford. Counsel presented closing statements orally after the close of the evidence.

Board members Charles Gaunce, Stacy Chandler, Jill Goodwin, Ben Luja, and Steven Hartley heard the evidence at hearings on December 3, 4, and 5, 2018. A majority consisting of members Gaunce, Goodwin, Luja, and Chandler held that Ford had established that it had good cause for the proposed modification,” under 10 M.R.S.A. § 1174(3) (B), so Count I of Darling’s petition was DENIED.

#### FINDINGS OF FACT

- (1) Darling’s Bangor Ford (Darling’s) has been engaged in the retail sale and service of new Ford motor vehicles under a Ford Sales and Service Agreement at a dealership in Bangor Maine since 1989. Their relationship is set out in the Franchise Agreement and clarified in *Ford I* and *Ford II*.
- (2) Maine Title 10, ch. 204 (the Dealers’ Act) allows a manufacturer to modify a dealer’s s’ Franchise, but if the modification substantially and adversely affects the motor vehicle dealer's rights, obligations, investment or return on investment, the manufacturer must give the dealer 90 days’ written notice by certified mail of the proposed modification to the motor vehicle dealer.
- (3) In April 2005, Ford ended BOC payments to all of its dealers except Darling’s, to which its notice violated Maine law and was not legally effective. *Ford I and Ford II*.
- (4) Despite its failure to provide Darling’s with legal notice in 2005, Ford has not made any BOC payments to Darling’s since March 31, 2005. *Ford I and Ford II*.
- (5) As required by law, Ford sent Darling’s a certified mail notice December 19, 2016, in which Ford proposed to end payments to Darling’s under the BOC 90 days after Darling’s received the letter.
- (6) By ending Darling’s entitlement to BOC payments, Ford put Darling’s in the same position as every other Ford dealer.
- (7) The witnesses agreed that automobile manufacturers run promotional programs, both large and small, all the time.
- (8) There was no evidence that Ford planned to offer other promotional programs if the Board decided that Ford could legally end the BOC payments.

## CONCLUSIONS OF LAW

(9) The Dealers' Act Provides in relevant part.

### **§1174. Prohibited conduct**

The following acts shall be deemed unfair methods of competition and unfair and deceptive practices. It shall be unlawful for any:

### **3. Certain interference in dealer's business.** Manufacturer...

B. To coerce, attempt to coerce a motor vehicle dealer.....by threatening or attempting to modify a franchise during the term of the franchise or upon its renewal, if the modification substantially and adversely affects the motor vehicle dealer's rights, obligations, investment or return on investment, without giving 90 days' written notice by certified mail of the proposed modification to the motor vehicle dealer, unless the modification is required by law or board order. Within the 90-day notice period, the motor vehicle dealer may file with the board and serve notice upon the manufacturer a protest requesting a determination of whether there is good cause for permitting the proposed modification. The manufacturer has the burden of proving good cause. ...In determining whether there is good cause for permitting a proposed modification, any relevant factors must be considered, including, but not limited to:

- (1) The reasons for the proposed modification;
- (2) Whether the proposed modification is applied to or affects all motor vehicle dealers in a nondiscriminatory manner;
- (3) Whether the proposed modification will have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment;
- (4) Whether the proposed modification is in the public interest;
- (5) Whether the proposed modification is necessary to the orderly and profitable distribution; and

(6) Whether the proposed modification is offset by other modifications beneficial to the motor vehicle dealer.

(10) Ford's certified mail letter of December 19, 2016, gave Darling's the legal notice required by the statute. *Ford I*, ¶ 44 .Tit. 10 §1174 (3) (B).

(11) The determination of any damages due to Darling's is beyond the scope of this proceeding.

(12) Ford sought to end its BOC payments to Darling's in order to apply that aspect of the BOC to all dealers in a nondiscriminatory manner.

(13) Darling's has been financially healthy and successful since 2005, despite Ford's refusal to make the BOC payments to which Darling's has been entitled since then.

(14) The proposed modification which would end its right to those payments would not have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment.

(15) The end of the BOC payments to Darling's franchise would not harm the public interest, because only Darling's remained entitled to those payments, and ending them would not reduce Darling's resources available for consumer purchases and services. Tit. 10 § 1182.

(16) By putting Darling's in the same position as every other Ford dealer, the modification enabled the manufacturer to ensure a continued orderly and profitable distribution of new automobiles.

(17) The witnesses agreed that manufacturers run large and small promotional programs all the time.

(18) Ford introduced no evidence of other modifications to offset its ending of the BOC payments to Darling's. Tit. 10 §1174 (3) (B).

(19) Ford has proven that it has "good cause" to make the modification described in its December 2016 certified-mail letter, that modification may take effect upon the Board's vote to adopt this decision.

**WHEREFORE**

Count I of Darling's Petition is DENIED.

**SO ORDERED**

March 18, 2019,

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John C. McCurry, Chairman