

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 1 - 1954
Mrs. Mike Holm
Secretary of State

STATE OF MINNESOTA)
COUNTY OF RAMSEY) SS

H. S. Ryberg, being first duly sworn, deposes and says that at the City of Minneapolis, in the County of Hennepin, on the 1st day of December, 1954, he served the attached order upon Irving Reiter, Anna Medal and Grace Reiter, doing business as Motor City, the persons therein named, by handing to and leaving with them a true and correct duplicate original of such order.

H. S. Ryberg
H. S. RYBERG

Subscribed and sworn to before me this
day of Dec., 1954

Rene Ferguson
Notary Public, Ramsey County, Minn.

My commission expires 5/15/56

12344

STATE OF MINNESOTA
BEFORE THE SECRETARY OF STATE
AND
REGISTRAR OF MOTOR VEHICLES

In the Matter of:

Raymond J. Hans,

Complainant

vs.

Irving Reiter, Anna Medal
and Grace Reiter, doing
business as MOTOR CITY

Respondents

DECISION
AND
ORDER

The above entitled matter came on for hearing before the undersigned, Secretary of State and Registrar of Motor Vehicles, at the State Capitol, Saint Paul, Minnesota, on September 16, 1954. Messrs. Clarence O. Holten and James S. Eriksson appeared as attorneys for the complainant. Samuel Saliterman, Esq., appeared as attorney for the respondents. J. A. A. Burnquist, Attorney General, by Joseph J. Bright, Assistant Attorney General, appeared as attorneys for the Secretary of State and Registrar of Motor Vehicles.

During the course of the hearing motions were made to dismiss the proceedings and the ruling thereon was reserved. At this point such motions are hereby denied.

The Secretary of State and Registrar of Motor Vehicles having reviewed the evidence adduced at the hearing, having considered the arguments of counsel as set forth in their briefs and on all the files and proceedings herein, makes the following

FINDINGS OF FACT

1. On or about April 20, 1954, the complainant filed a complaint with the Secretary of State and Registrar of Motor Vehicles charging the respondents with having sold him a new and unused 1954 Pontiac

automobile, bearing Serial No. P8ZA9481 without being authorized by law so to do. Said complaint also charged the respondents with having sold Joel H. Haworth and Beverly Haworth a new and unused 1954 Mercury automobile, Serial No. 54SL24647M without being authorized by law so to do. Thereupon a copy of such complaint was duly served upon the respondents by the Secretary of State and Registrar of Motor Vehicles who noticed for hearing and determination the matters involved in said complaint, all as required by M. S. 1953, § 168.27, Subd. 7. The decision and order herein results from such hearing.

2. The complainant at all times herein stated was an investigator and the undisclosed agent of the Minnesota Automobile Dealers Association, an organization of motor vehicle dealers duly licensed to sell new and unused motor vehicles. Said complainant had been a salesman of motor vehicles and was familiar with the business of selling new and unused and used motor vehicles.

3. The respondents are in the business of selling motor vehicles in the state of Minnesota and their place of business is at 306 E. Lake Street, Minneapolis Minnesota, and during the year 1954 were duly licensed and authorized to sell used motor vehicles pursuant to M. S. 1953, § 168.27.

4. On or about April 8, 1954, the complainant purchased from the respondents a 1954 Pontiac automobile, Serial No. P8ZA9481 for \$2,674.98. Delivery of such motor vehicle was made on or about April 9, 1954 and the order consummating the transaction was written on a "used car order blank" with the following endorsement contained thereon:

"Battery and car warranties in effect".

5. At the time of such sale of said 1954 Pontiac automobile the mileage on the speedometer registered 9.9 miles, portions of the car were covered with paper and cardboard was on the floor thereof in the usual manner of motor vehicles leaving

the factory, an unexecuted new car warranty and service policy were in the glove compartment, the car radio had operating instructions attached, and the motor vehicle was not equipped with license plates. The complainant testified that the motor vehicle was sold to him as a new and unused automobile by a salesman of the respondents who informed him that a new car warranty and a service policy would be delivered.

5. Said 1954 Pontiac was sold by the manufacturer to Ryan and Nei, a licensed dealer of new and unused Pontiac motor vehicles at Zumbrota, Minnesota, and was first registered by the Registrar of Motor Vehicles in the name of John M. Malley, Jr., a representative of West Side Motors, Rochester, Minnesota. The automobile was bought by Ryan and Nei from the manufacturer on February 4, 1954 and sold to John M. Malley, Jr. on February 6, 1954, who under date of March 15, 1954, transferred the same to the respondents. The motor vehicle was purchased by the respondents at an automobile auction in Mason City from West Side Motors, Rochester, Minnesota. After acquiring the motor vehicle from the respondents, the complainant transferred the same to Hansford Pontiac, a member of the Minnesota Automobile Dealers Association.

7. On or about February 20, 1954, the respondents sold a 1954 Mercury automobile, Serial No. 54SL24647M to Beverly Haworth and Joel H. Haworth, 3251 40th Ave. South, Minneapolis, Minnesota, for the sum of \$2,962.48 including financing and related charges. Delivery of such motor vehicle was made on or about February 22, 1954. The conditional sales contract covering such transaction describes the motor vehicle as "used".

8. At the time of such sale of the 1954 Mercury automobile by the respondents to Beverly and Joel H. Haworth, the speedometer of the vehicle registered 100 miles and the purchasers were informed by the respondents that the motor vehicle came from a dealer in Wisconsin, the mileage represented in transit mileage, that the automobile was brand new, that it was sold as a used car

because the respondents were unauthorized to sell new and unused cars in Minnesota and that it was sold with the usual new car warranties.

9. The 1954 Mercury automobile above described was purchased from the factory by the Eau Claire Lincoln-Mercury Company, was transferred to Irving Blitz, a salesman in the employ of the respondents under date of February 20, 1954, was transferred from Irving Blitz to the respondents on February 20, 1954 and was transferred to Beverly and Joel H. Haworth under date of February 22, 1954.

CONCLUSION

(a) That the 1954 Pontiac automobile sold by the respondents to the complainant may have been a new and unused motor vehicle at the time of the sale. However, there is a reasonable doubt that the Legislature intended that sale of motor vehicles, under such circumstances, constituted a violation of M.S. 1953 #168.27.

(b) That the 1954 Mercury automobile sold by the respondents to Beverly and Joel H. Haworth may have been a new and unused motor vehicle at the time of such sale. However, there is a reasonable doubt that the Legislature intended that sale of motor vehicles, under such circumstances, constituted a violation of M.S. 1953, #168.27.

ORDER

That the complaint of the complainant be, and the same is, hereby dismissed.

Dated this 1st day of December, 1954, at St. Paul, Minnesota.

Mrs. Mike Holm
Secretary of State and
Registrar of Motor Vehicles

MEMORANDUM

Respondents for the year 1954 had complied with the statutory requirements of M.S. 1953, #168.27 relating to authority to engage in the business of selling used motor vehicles. Because the provisions of such statute relating to the sale of new and unused motor vehicles is vague and indefinite, there is a reasonable doubt that respondents had not complied with the provisions of such statute.

Under the customs and practice prevalent in the motor car industry, the 1954 Pontiac was originally sold by the factory to a franchised Pontiac dealer. Likewise, the 1954 Mercury was sold by the factory to a franchised Mercury dealer. Such motor vehicle dealers, if licensed in Minnesota, are required to be licensed with authority to engage in the business of selling new and unused motor vehicles. Had such dealers, if licensed in Minnesota, observed the requirements of M.S. 1953, #168.27, the two motor vehicles would never have come into the possession of the respondents so that they could be charged with violations of the statute by an agent of the Minnesota Motor Vehicle Dealers Association.

It is evident from the evidence in this proceeding that the dealers of new and unused motor vehicles and the dealers of used motor vehicles are engaged in an economic conflict brought about by an oversupply of automobiles. The used car dealers, such as the respondents, are no more responsible for economic conditions existing in the automobile markets than are the new and unused car dealers. If the new and unused car dealers complied with all of the requirements of Minnesota law by selling their automobiles only to consumers or to other dealers of new and unused motor vehicles having franchises to sell the same makes of automobiles, there could be no complaints of violations of Minnesota law by a licensed dealer of used cars.

Under such circumstances, it appears to the Secretary of State and Registrar of Motor Vehicles that it would be unjust and inequitable to hold that there had been a violation of M.S. 1953, #168.27.

No one has been injured or damaged by the respondents in selling the two automobiles referred to herein. The respondents are reputable dealers of motor vehicles, abide by their contract commitments and appear to have acted in good faith in the transactions disclosed by the evidence.

The evidence, in my opinion, reveals the need for enactment of a law making it unlawful, punishable perhaps by revocation of licenses, for any dealer, new or used car dealers, to tamper with the speedometer of a motor vehicle by setting it back to zero or to a reading of lesser mileage than the actual mileage the motor vehicle was driven.

The evidence, in my opinion, also discloses the need for clarification of M.S. 1953, #168.27 so that there will be a clear definition of what constitutes a new and unused motor vehicle.

This memorandum is made a part of the decision and order.

Mrs. M. H.
Mrs. Mike Holm

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