

**IN THE COMMON PLEAS COURT, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

KJAMS, L.L.C, dba		
STEVE ROGERS FORD,	:	Case No. 16CV-11303
	:	
<i>Plaintiff,</i>	:	Judge Frye
	:	
v.	:	
	:	
FORD MOTOR COMPANY, et al,	:	
	:	
<i>Defendant.</i>		

DECISION AND FINAL JUDGMENT
AFFIRMING MOTOR VEHICLE DEALERS BOARD
(Board Case No. 15-10-MVDB-387-KR)

I. Introduction.

This is an administrative appeal pursuant to R.C. 119.12 and R.C. 4517.58. KJAMS, L.L.C., dba Steve Rogers Ford, appeals from a decision of the Ohio Motor Vehicle Dealers Board announced by letter dated November 21, 2016. The Board declined to hear KJAMS complaint that Ford Motor Co. was improperly allowing another dealer to move its dealership location.

KJAMS’ appeal was initially before this court last year. That resulted in a decision dismissing the appeal for lack of jurisdiction, and remanding the case for a final decision by the Board. In this court’s view, the initial decision of the Board (which is substantively exactly the same as the decision issued last November now appealed) was procedurally defective. The first decision had been issued by a Board that lacked a legal quorum. The reader is referred to that Opinion for more details. *KJAMS, L.L.C. v. Ford Motor Co.*, Franklin Co. C.P. No. 16CV-5337, 2016 Ohio Misc. LEXIS 117 (July 15, 2016).

This time around it is undisputed that the Board was properly constituted with a quorum of public members. When the case came back from this court, the record shows, it got no new substantive attention. Instead, as a result of a peculiar administrative practice permitted by applicable statutes - passive adoption of a hearing

examiner's decision simply because the Board fails to meet or otherwise act on a case within 30 days - the Board issued the November 2016 ruling now on appeal.¹

For the reasons explained below, this court finds the Board decision now under appeal is supported by reliable, probative and substantial evidence and is in accordance with law. Accordingly, it is **AFFIRMED**.

II. The Issue on Appeal.

Generally speaking, pursuant to R.C. 4517.50(A) a motor vehicle franchisor like Ford Motor may not approve a request to relocate an existing car dealership without notice to the Board, as well as notice to each existing franchisee in the market area that might be affected by the move. Affected franchisees may then file a protest with the Board relative to relocation of a competitor's dealership. However, there is an exception by statute for relocations that are within only one mile. R. C. 4517.50(C). The notice and protest procedure does not apply to "relocation of an existing new motor vehicle dealer within one mile from the existing location."

KJAMS argues that Brondes Ford's existing dealership location is not within one mile of the proposed new location for Brondes Ford; thus the statutory exception does not apply. Accordingly, the Board is alleged to have been wrong not to require Ford Motor to go through the statutory notice and hearing process. It is clear from the record, however, that under one sensible view of the facts the new Brondes dealership location is within the one-mile exception.

KJAMS acknowledges that Ford Motor did evaluate the 1-mile radius issue. Ford even prepared a map showing both locations. (KJAMS' Brief, at p. 8, ¶¶ 7 - 14). Obviously disagreeing with the reading of the one-mile exception adopted by Ford (and the Board,) KJAMS argues the Board had jurisdiction, and that Ford was wrong in its application of the statutory one-mile exception. A Hearing Examiner sided with Ford. The Hearing Examiner's "Recommendation of Dismissal" filed with the Board on April

¹ In passing, the reader should note that collateral declaratory judgment litigation was filed relative to the meaning of the statute at the heart of this case. Although apparently such law suits have not yet all been resolved, the main case recently resulted in an appellate decision. *Brondes Ford v. Rogers Ford*, 6th Dist. Case No. L-16-1210, 2017-Ohio-4015, 2017 WL 2303653 (May 26, 2017). That decision reviews much of the history of the dispute, but ultimately concludes that no justiciable controversy was before it that could justify a declaratory judgment.

29, 2016, specifically addressed the one-mile issue, finding that “The map was emailed from Ford to KJAMS. The Proposed Location is identified on the map as ‘Brondes Site’ and is west of the Existing Location and partially within the one mile radius of the most western point of the Existing Location.” (Recommendation, p. 2) Based upon this factual finding, the Hearing Examiner then recommended as a matter of law that the “statutory exception to the R.C. 4517.50(A) notice applies” and that KJAMS’ appeal should be dismissed. (*Id.* p. 5)

In addition to the proper interpretation of the one-mile exception, KJAMS argues they were not afforded “due process” - a reasonable opportunity to assert their position on how the one-mile provision should be applied - before the Hearing Examiner. (Appellate Brief at pp. 5 - 7). Yet, the Recommendation of the Hearing Examiner specifically noted KJAMS’ view on the issue. (Recommendation, p. 5) There plainly is no denial of due process here.

The real issue presented is how one measures the one-mile, and more specifically uses a so-called “straight line method of measurement” when the statute does not specify any method of measurement. Ford Motor used a straight line method, and concluded that a portion of the new Brondes Site was found to fall within a one-mile radius of the existing Brondes dealership. The Hearing Officer agreed, finding that the “majority of the [new Brondes] site [falls] outside the one mile radius.” (*Id.* p. 5) She also recognized “[c]ourts favor the straight-line method of measurement ***.” (*Id.*)

In this appeal, KJAMS argues these conclusions were improper as a matter of statutory construction, and that the word “‘within’ requires any proposed dealership location not to extend beyond a one-mile radius.” (Brief at p. 13, citing *State v. Shepherd*, 61 Ohio St.2d 328 (1980), syllabus.) *Shepherd* is distinguishable. It addressed a separate statute.² Yet, contrary to KJAMS’ argument that decision embraced the straight-line method of measurement. “The common understanding of

² R.C. 4513.33, allowed police to direct a vehicle to proceed to the nearest available scales to be weighed provided the scales were within three miles of the point where the vehicle was stopped. The court held that meant straight-line distance, rather than road miles. Applying the distance limitation in road miles “would unduly restrict enforcement due to the fact that most fixed-location scales are on limited-access highways” and trucks dodging around such scale locations by using side roads might well be caught more than three road miles from the scale. The General Assembly would have had no such intent to make it difficult to enforce load limitations for the protection of the public. 62 Ohio St.2d, 330 - 31.

the phrase ‘within three miles’ is that it refers to straight-line distance.” *Id.* at 331.

Since *Shepherd*, numerous decisions have recognized that the default rule is to apply straight-line distance measurement in cases arising under R.C. Chapter 4517. *E.g., M6 Motors, Inc. v. Nissan of N. Olmstead, L.L.C.*, 8th Dist. Case No. 100684, 2014-Ohio-2537, 14 N.E.3d 1054, ¶¶ 59, 66, citing *Fleisher v. Ford Motor Co.*, 10th Dist. Case No. 09AP-139, 2009-Ohio-3846. In another context, the straight-line method of measurement is also used under Ohio statutes, from property line to property line even if additional distance exists as a setback from the line to the building within the property. *State ex. rel. O’Brien v. Phillips*, Franklin Co. C.P. No. 13CV-10431, 2014 Ohio Misc. LEXIS 10083, at footnote 2, citing *State ex rel. O’Brien v. Messina*, 10th Dist. Case No. 10AP-37, 2010-Ohio-4741, at ¶ 16. (Both decisions involve measurement of the 1000’ radius used to calculate the minimum distance between a sex offender’s residence and school premises.)

KJAMS contends the statutory exception in question requires all of the proposed new dealership fit within the one-mile radius of the current dealership location. The statute is not so precise. The Board was within its discretion in concluding that, using straight-line measurement, Ford Motor offered a reasonable understanding of the statute in asserting that so long as any part of the old and new facilities fell within one-mile of each other the statutory exception applies. That obviously reduces the administrative burden on the Board, by carving-out some cases from Board review. But, that is a policy decision for the Board to make, which the legislature seemingly intended in creating this one-mile exception for in the first place.

To be sure, the Board could have concluded otherwise. But, this court cannot say this reading of the exception is wrong as a matter of law, particularly given the deference courts are to show to reasoned interpretations of statutes by agencies charged with their enforcement.

As the administrative regulatory arm of the State in this particular field, the Board is entitled to use its own version of straight-line measurement in applying the one-mile radius statute. “[C]ourts, when interpreting statutes, must give due deference to an administrative interpretation formulated by an agency which has accumulated substantial expertise, and to which the legislature has delegated the responsibility of

implementing the legislative command.” *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 2004-Ohio-5717, ¶ 26 and cases cited.

KJAMS also argues that the interpretation given to a similar law in Florida should be followed here. (Brief at p. 21) That involves a different statute and tells us nothing about what Ohio law is intended to be. Additionally, KJAMS tenders an affidavit from Joseph F. Roesner, “an expert in the new motor vehicle field.” (Brief at 23, and Affidavit attached as Appellant’s Exhibit 2) He argues it is the custom and practice of the industry to measure distances from the “centroid” or geographical center of each point, and that using that method the existing Brondes location is not within a one-mile radius of the proposed Brondes relocation site. (Affidavit, ¶¶ 7, 11) A similar affidavit was rejected by the Eighth District in *M6 Motors, Inc., supra*, at ¶ 65 because statutory interpretation of R.C. 4517.50(C)(3) presents a question of law not of fact. This is consistent with the general rule that expert testimony on the law is inadmissible. *E.g., Gomez v. Rivera Rodriguez*, 344 F.3d 103, 114 (1st Cir. 2003) and cases cited; *Contini v. Hyundai Motor Co.*, 876 F. Supp. 450, 542 (S.D. N.Y. 1995) (meaning of Federal Motor Vehicle Safety Standards); *Nationwide Mutual Ins. Co. v. American Reinsurance Co.*, 796 F. Supp. 275, 281 (S.D. Ohio 1991) (Holschuh, J.); *Payne v. A.O. Smith Corp.*, 627 F. Supp. 226, 228 (S.D. Ohio 1985) (Consumer Product Safety Comm. rules) (Rice, J.).

FINAL JUDGMENT

Having considered Appellant KJAMS' arguments, the court **AFFIRMS** the decision of the Motor Vehicle Dealers Board of Ohio in Case No. 15-10-MVDB-387-KR. Court costs of this appeal, including \$39.45 for the cost of copying the administrative record (as documented by the Board on Dec. 27, 2016) are taxed against KJAMS.

This is a Final Appealable Order. It terminates the appeal on this court's docket.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 06-16-2017
Case Title: KJAMS LLC -VS- FORD MOTOR COMPANY ET AL
Case Number: 16CV011303
Type: DECISION

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Richard A. Frye". The signature is written over a blue circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Richard A. Frye

Court Disposition

Case Number: 16CV011303

Case Style: KJAMS LLC -VS- FORD MOTOR COMPANY ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes