

**AMERICAN ARBITRATION ASSOCIATION
AUTOMOBILE INDUSTRY SPECIAL BINDING ARBITRATION
PROGRAM**

In the Matter of the Arbitration between:

**Robert H. Hinckley, Inc.
dba Hinckley Dodge
and
Chrysler Group LLC**

AAA Case: 77 532 00063 10 JMLE

Written Determination of Arbitrator

I, the undersigned Arbitrator, having been designated pursuant to Section 747 of the Consolidated Appropriations Act of 2010 (Public Law 111-117) (the "Act"), enacted December 16, 2009, and having been duly sworn and having heard the proofs and allegations of the parties, do hereby make my Written Determination pursuant to the Act.

Background

The Act affords a "covered dealership" (as defined in Section 747(a)(2)) the right to challenge by binding arbitration the decision of a "covered manufacturer" (as defined in Section 747(a)(1)(A) and (B)) to terminate, or not to assign, renew or continue, the covered dealership's franchise agreement. This case was filed in accordance with the Act's provisions and I held hearings and heard testimony on **May 3, 4 and 5, 2010**. Set forth below is my "written determination" (as provided for in 747(d) of the Act) of the issue to be decided under the Act, namely "whether or not the covered dealership should be added to the dealer network of the covered manufacturer."

I. The Covered Dealership

This proceeding concerns the automobile dealership known as Robert H. Hinckley, Inc. dba Hinckley Dodge (hereafter "Hinckley Dodge"), and located at 2810 Washington Boulevard, Ogden, Utah 84401 (the "Dealership").

II. Determination

The covered dealership described above in Section **shall not be renewed or continued** and therefore **shall not be assumed** by the covered manufacturer, in the manner provided for by the Act and in accordance with the terms and conditions of the Act.

III. Key Facts Relied Upon by the Arbitrator in Making the Determination

In accordance with Section 747, I considered the following factors:

1. The covered dealership's profitability in 2006, 2007, 2008 and 2009,
2. The covered manufacturer's overall business plan,
3. The covered dealership's current economic viability,
4. The covered dealership's satisfaction of the performance objectives established pursuant to the applicable franchise agreement,
5. The demographic and geographic characteristics of the covered dealership's market territory,
6. The dealership's performance in relation to the criteria used by the manufacturer to terminate and not renew the dealership's franchise agreement, and
7. The length of experience of the dealership.

In making the determination, I relied upon the following key facts:

A. Hinckley Dodge is a long-term dealer that has been doing business as a Dodge dealer since 1915. It was a dealer of Dodge before that brand was acquired by Chrysler. However, longevity alone does not militate in an automatic determination for a dealer under the Section 747 factors. Notwithstanding this factor, the length of service was strongly considered together with the other factors in the evaluation and review of all testimony and evidence presented in this proceeding.

B. The Hinckley Dodge dealership was rejected pursuant to an order of the United States Bankruptcy Court entered by the Honorable Arthur Gonzalez on or about June 9, 2009. Since the rejection of its dealer agreement, Hinckley Dodge has continued to operate at its location and build on its foundation to sell used cars and offer service.

C. Mr. James Hinckley, Jr., the General Manager of Hinckley Dodge, testified that the dealership has been able to minimize the loss of personnel of the dealership by transferring certain personnel to another facility in Salt Lake City, Utah, operated by James Hinckley, Sr., laying off some of its staff and transforming itself to a used car facility at 2810 Washington Boulevard, Ogden, Utah. The Salt Lake City facility is a Chrysler, Dodge, Jeep, Ram dealership. Through these efforts by Hinckley Dodge to retain key personnel, focus on used car sales and its focus on its historic customer base and service, the location has remained viable.

D. Key executives Mr. Gordon Nevers and Mr. Eric Jensen of New Chrysler testified that the determination to not continue the Hinckley Dodge dealership was a very difficult but necessary decision to implement the New Chrysler overall strategy and agreements New Chrysler made as part of the bankruptcy plan and thereafter. New Chrysler (or its predecessor) performed a total market analysis and review of the greater Ogden and Utah trade areas. The review included sales, growth potential, competitor mapping and other factors. The analysis was used in part to continue the transformation of Chrysler to its "Genesis" concept which included the combination of Chrysler, Dodge, Ram and Jeep at dealership locations. (See M-11). Hinckley Dodge did not offer either Chrysler or Jeep.

E. Hinckley Dodge has missed key sales performance requirements known as MSR or Minimum Sales Responsibility. (See generally M-11). The MSR provides a standard and uniform application for all dealers calculated on industry registration to benchmark local retail sales to state market share. Failure of these key performance objectives supported Chrysler's decision to terminate the Hinckley Dodge dealership. The inability to maintain minimum sales standards by Hinckley Dodge provided adequate rationale to terminate the dealership.

F. Hinckley Dodge testified that its MSR performance was not significantly below the required average. Significant deference was given to the financial and operational performance of the dealer. Hinckley Dodge has a strong cash position and had good Dodge sales for many years as a single point dealership.

G. The Hinckley Dodge dealership is an old facility in need of renovations and a facelift. (See photos M-27, et. seq.).

H. In reviewing the public's interest, it is noted that New Chrysler has entered into a letter of intent to add a new Genesis dealership with the Larry Miller organization, a successful Utah company with many dealerships in several different states. The letter of intent was entered after the bankruptcy rejection of the Hinckley Dodge dealership agreement and is located in a better retail area of the Ogden metropolitan market. The Miller location is currently being built and when the facility is completed, it will sell and perform as a "Genesis" dealership. This is a key component of the new Chrysler plan.

I. While there was testimony that a "Genesis" dealership could not be an assurance or guaranty of success, it was undisputed that the new location of Miller was located on or near highways with significantly higher traffic counts, was placed near other auto dealerships and the area had a good retail presence. The testimony indicated that the location of its dealers near competing manufacturers was a goal of Chrysler. Chrysler's experience found that such placement helped improve the brand's awareness and sales of their product lines. In short, the Miller location offered a superior area for Chrysler to have a Genesis dealership in terms of both demographic and geographic characteristics.

J. It should be noted that the existing Hinckley Dodge facility, while ably operated by its General Manager, has not been significantly upgraded for many years. While the decision to not upgrade or otherwise address the facility may have been financially prudent, from the perspective of the public, updated and modern facilities often play a key role in a brand's success.

K. The testimony established that when the investment income was removed, the Hinckley Dodge dealership was actually losing money as a new car dealership although there was some argument about extraordinary expenses caused by an earlier attempt at termination by Old Chrysler. (See D-21).

L. The testimony and exhibits of Chrysler detailed the Genesis plan and the risks to Chrysler employees, lenders and owners if the plan did not succeed. There was no testimony as to the actual burden of proof at the hearing. The statute does not discuss the burden of proof but

only the balance of enumerated provisions and interests. This determination does not state that Hinckley Dodge did not carry its burden of proof but only that considering the balancing factors enumerated in Section 747, Hinckley Dodge should not be continued with Chrysler as a Dodge dealership.

IV. Balance of Economic Interests


The balance of economic interests of the covered dealership, of the covered manufacturer and of the public supports this determination. The Hinckley Dodge dealership has transitioned as a used car facility and has made a profit in that transition. Chrysler will have the Ogden marketplace arranged in a way that more closely coincides with its plan to implement Genesis and the public will be adequately served by Dodge's continued presence within an accessible demographic area.

V. Costs

In accordance with the statute, the administrative fees and expenses, and the arbitrator's fees and expenses shall be borne equally.

This Award is in full settlement of all claims submitted to this arbitration.

DATE: May 17, 2010



Robert M. Anderson, Arbitrator