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Steven Cole Smith: Central Florida car dealers appeal 'firings'

Steven Cole Smith Sentinel columnist

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Last summer, 789 Chrysler and about 2,000 General Motors dealers received letters from the manufacturers saying that their services were no longer required. Both were in bankruptcy and consequently allowed to make decisive moves that might be prohibited by law otherwise. So they trimmed what they considered to be "underperforming dealers" from the rolls.

GM, at least, gave dealers until their current franchise agreements ran out, which for the vast majority is in October, to shut down. And it had an informal appeal process that allowed a few dealers to successfully plead their cases to stay open. Chrysler was much more brutal, giving the 789 terminated dealers less than a month to shut down.

In Central Florida, eight Chrysler dealers — which sold Chrysler, Jeep, Dodge or some combination — got the ax. General Motors has never released a list of terminated dealers, but the best guess is that about 15 statewide got "Dear Dealer" letters, and that does not include brands that GM is closing or selling: Saab, Hummer, Pontiac and Saturn.

That was that, until last month, when President Obama signed a bill that will allow terminated dealers a chance to plead their cases before a neutral arbitrator. The American Arbitration Association is compiling a list of arbitrators — most of them judges or attorneys with a financial background — and dealers who filed for arbitration before the deadline a week ago will have their cases heard, and decided, by the middle of June. More than 1,500 dealers paid the estimated \$2,000 in filing expenses, well more than half of the terminated dealers.

In Central Florida, some dealers will fight the closing. Holler Chevrolet and Classic Chevrolet, both controlled by the Holler family, will appeal. "Our roots go deep into the Chevrolet brand, and we feel a strong sense of commitment to our Chevrolet customers. That's why we are participating in this process," said dealer counsel Frank Hamner. Holler has been selling GM products in Orlando since 1938.

But some dealers will not fight. "We didn't file," said Buddy Vickers, whose Jimmie Vickers Jeep dealership in Merritt Island lost its Jeep franchise after 38 years when Chrysler awarded it to a Dodge-Chrysler dealership a mile up the road. "The cards are stacked against a small dealer," Vickers said, "and I don't think we'd stand much of a chance, particularly given what it could cost."

Vickers remains in business selling Suzukis, and performing service on Jeeps. "It still hurts," Vickers said. "I especially feel bad for my father, who started this store nearly 40 years ago. It isn't right, but it is what it is."

Other dealers have already closed after being paid some negotiable termination fee by the manufacturer to essentially go away. That was the case with Massey Cadillac in Sanford, which is owned by Charlotte, N.C. -based Sonic Automotive, controlled by motorsports magnate Bruton Smith. "We lost some dealers, but we aren't appealing any of them," Smith said. "We just took the money and closed them up."

Sonic still has 11 dealers in Florida.

So even if a dealer arbitrates, what are the chances of succeeding?

It depends on a lot of things, said attorney Alex Kurkin of Kurkin Forehand Brandes, a law firm in Miami. Kurkin is handling 10 arbitration cases, including some for Central Florida dealers. Kurkin said he must prove the dealership was terminated without proper cause. Three outcomes are possible: The dealership can be terminated, it can be reinstated or the manufacturer can negotiate some financial settlement to close the case.

The arbitrator will be agreed upon by both sides, and if they can't agree, one will be appointed, Kurkin said.

"We have so much work to do between now and the June deadline," Kurkin said. "Normally we have months to prepare a case. With this, we have weeks."

And, unless one side can prove "gross" misconduct during the arbitration process, the decision is binding.

Kurkin could probably have more than 10 cases if he wanted, "but that's all I want to handle right now. This is an incredibly complex, time-dependent procedure." Total costs for a dealer? As much as \$80,000, Kurkin estimated. That is especially hard on Chrysler dealers, who have not been in business since last June.

In Florida, if you have been out of business for a year, you have to re-file with the state as a brand-new business. All 789 Chrysler dealers lost their franchises last June. "That's why this June deadline for completing arbitration is so critical for Chrysler dealers," Kurkin said.

And one aspect of the process that makes it even tougher for Chrysler dealers, such as Jimmie Vickers Jeep. Even if the arbitrator decides in the dealer's favor, and Chrysler must return the franchise to the dealer, there is no provision that requires Chrysler to take the franchise away from a dealer that it was awarded to last year. So even if Vickers arbitrated and prevailed, the Dodge-Chrysler dealer a mile up the road could still have its new Jeep franchise. That would then have to be resolved under state franchise laws.

It's a mess, but at least it's a second chance for wronged dealers to plead their cases. Chrysler and GM acted arbitrarily in many of their closings, with no concern for loyal dealers, even less concern for loyal customers. This could get interesting.

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