

Appellate Court Issues Decision of First Impression Under the New York Franchised Motor Vehicle Act

Jon A. Ward, Andrew M. Roth and Joseph R. Bjarnson, Partners with the Firm, successfully represented the Biener Auto Group (Biener), an Audi dealer located in Great Neck, New York, before the New York State Supreme Court, Appellate Division, Second Department, in a case of first impression under the New York Franchised Motor Vehicle Dealer Act (the Dealer Act).

The Dealer Act includes a provision requiring a manufacturer to give notice to a dealer of any “modification” of the dealer’s franchise to enable the dealer to provide the opportunity to challenge the modification. Likewise, it also contains a provision requiring a manufacturer to give notice to a dealer if it is establishing a new dealership within the “relevant market area” of an existing dealer of the same brand of cars. On Long Island, a dealer’s “relevant market area” is defined under the Dealer Act as a six (6) mile radius around the existing dealer’s facility.

In 2013, Audi of America, Inc., the U.S. importer of new Audi vehicles from Germany, awarded a new Audi dealership to Biener in Westbury, New York. The new dealership will be located more than six miles away from any existing Audi dealerships.

Nevertheless, JJM Sunrise Automotive (JJM), a competing Audi dealer located in Lynbrook, New York, commenced a civil action to enjoin Audi of America from allowing Biener to open the new Audi dealership in Westbury, bringing claims against Audi of America and Biener under the Dealer Act, as well as common-law contract and tort claims. JJM alleged, among other things, that the creation of the new Audi dealership in Westbury constituted a “modification” of its dealer franchise in violation of the Dealer Act. Audi of America and Biener moved to dismiss JJM’s “modification” claim on the ground that the new dealership would not be located within JJM’s “relevant market area” and, therefore, JJM could not state a claim against Audi of America and Biener under the Dealer Act. JJM argued that it could still bring a claim under the “modification” provision of the Dealer Act, even though the new dealership would be located outside of its “relevant market area.”

The Nassau County Supreme Court dismissed JJM’s modification claim under the Dealer Act, finding that no such claim could be brought in connection with the establishment of the new dealership in Westbury because establishment of new dealerships is governed by the “relevant market area” provision of the Dealer Act, and the new Westbury dealership would be outside of JJM’s “relevant market area.” JJM appealed the ruling to the Appellate Division, Second Department.

In a decision and order dated April 26, 2017, the Appellate Division, Second Department, affirmed the ruling of the Nassau County Supreme Court. The Appellate Division held that permitting JJM to challenge the addition of the Westbury dealership under the “modification” provision of the Dealer Act would essentially render the “relevant market area” provision of the Dealer Act superfluous. As such, it found that the Nassau County Supreme Court properly determined that the “relevant market area” provision of the Dealer Act is the sole mechanism

under the Dealer Act by which a competing dealer can challenge the establishment of a new dealership.

The Appellate Court's decision affirms the precedent in this case of first impression that, unless a proposed dealership is located within a six-mile radius of an existing franchise, the existing franchise will be unable to challenge the franchisor's decision.

"We are glad that this claim was dismissed against our client," Mr. Ward said. "The Dealer Law makes it very difficult, if not impossible, for an automobile manufacturer to place a new dealership of the same brand car within the six-mile range. Likewise, based on the ruling, it makes it impossible for a dealer to sue a manufacturer under the Dealer Act for the establishment of a new dealership more than six miles away from existing dealers of the same brand."