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## BLOGS

Encroachment

# Appointment of a New Dealer in Existing Dealer's Market Does Not Violate Pennsylvania Board of Vehicles Act

The Commonwealth Court of Pennsylvania recently reversed a decision by the State Board of Vehicle Manufacturers, Dealers and Salespersons that prohibited Arctic Cat from appointing a new dealer to sell ATVs within an existing dealer's market. *Arctic Cat Sales, Inc. v. State Bd. of Vehicle Mfrs., Dealers, and Salespersons*, 2015 Pa. Commw. LEXIS 78 (Pa. Commw. Ct. Feb. 23, 2015). The existing dealer, Nieman, filed a protest before the board alleging that the addition of a new ATV dealership in its market would result in a price war that would cause one or both dealers to withdraw from the market, thereby eliminating competition. This, Nieman claimed, provided good cause under the Board of Vehicles Act, which required the board to consider whether the addition of a new vehicle dealer would increase competition in a manner that benefits consumers, for the board to disallow the entry of the new dealer. The board found in favor of Nieman, and Arctic Cat sought review by the Commonwealth Court of Pennsylvania.

The court found that, under the Act, the protesting dealer had the burden of proving that there was good cause to prohibit a manufacturer from establishing additional dealerships within its market. In reviewing Nieman's claim that the new dealership would lead to decreased competition, the court noted that Nieman did not offer any market analysis or statistical studies to support its allegations. It instead relied on the testimony of its principals and evidence that a prior dealer had discontinued selling ATVs in Nieman's market due to competition with Nieman and the entry of a big box competitor into a nearby market. Because Nieman did not present any evidence to support its allegation that competition would be suppressed by the addition of a new dealer, the court reversed the board's decision.

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