

BLOGS

State Franchise and Dealer Laws

New Hampshire Supreme Court Holds Settlement of Termination Dispute Violates Statute

An agreement by which an automobile manufacturer and its dealer resolved a termination dispute violated New Hampshire's dealer protection statute, the state's highest court held this month. *Strike Four, LLC v. Nissan North America, Inc.*, 2013 N.H. LEXIS 37 (N.H. April 12, 2013). After Nissan originally sent a notice of termination, which its dealer protested, the parties reached a settlement by which the dealer would be given a new two-year contract but would be required to sell or lose its dealership without protest if any future defaults or breaches occurred, including the failure to meet sales goals. When Nissan later invoked the agreed forced-sale provisions because of slow sales, the dealer protested again and lost, then filed suit in state court and won. Nissan appealed to the state's high court.

The New Hampshire Supreme Court's decision affirming the decision in favor of the dealer turned on the court's finding that private parties cannot contractually agree to a termination process that contradicts the state's statutory protections for dealers. First, the dealer was not estopped from challenging the forced-sale provision simply because the dealer had agreed to it. And, the anti-waiver language of the New Hampshire statute rendered unenforceable the agreement regarding future termination conditions. The key statutory language limited discontinuance of a dealer regardless of the terms of "any agreement or franchise, and notwithstanding the terms or provisions to any waiver." Because the parties' settlement agreement had eliminated the dealer's protest rights and other protections, it was held invalid.

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