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2013 IL App (4th) 080893-U

NO. 4-08-0893

FILED
June 26, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

GENERAL MOTORS CORPORATION, Plaintiff-Appellant, v. THE STATE OF ILLINOIS MOTOR VEHICLE REVIEW BOARD; TERRENCE M. O'BRIEN; NORTH SHORE, INC., d/b/a MULLER PONTIAC/GMC MAZDA; and JOE MITCHELL BUICK/GMC TRUCK, INC., Defendants-Appellees, and LOREN BUICK, INC.; GROSSINGER AUTOPLEX, INC.; and CASTLE BUICK-PONTIAC, INC., Defendants.	)	Appeal from Circuit Court of Sangamon County No. 08MR240 Honorable C. Joseph Cavanagh, Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed the State of Illinois Motor Vehicle Review Board's grant of attorney fees in defendants' favor, agreeing with the plaintiff that section 13 of the Motor Vehicle Franchise Act requires a finding of misconduct before attorney fees can be awarded.

¶ 2 In February 2001, plaintiff, General Motors Corporation (GMC), sought to add a new franchise to two existing Illinois automobile dealerships, specifically, an additional franchise at Jacobs Twin Buick (Jacobs) in Chicago and another franchise at defendant Loren Buick (Loren) in Glenview. In pursuit of that goal, GMC informed defendants North Shore, Inc., d/b/a Muller Pontiac/GMC Mazda (Muller); Grossinger Autoplex, Inc. (Grossinger); Joe Mitchell

Buick/GMC Truck, Inc. (Mitchell); and Castle Buick-Pontiac, Inc. (Castle), of its intent as required by the Motor Vehicle Franchise Act (Franchise Act) (815 ILCS 710/1 to 32 (West 2000)).

¶ 3 In response, the four dealerships timely filed their objection to GMC's plan as permitted by the Franchise Act. Following an administrative hearing, defendant, the State of Illinois Motor Vehicle Review Board (Board), prohibited the establishment of the new franchises because GMC failed to meet its burden of showing that good cause existed to allow the expansions. The Board also determined that because the dealerships had "substantially prevailed," they were entitled to attorney fees under section 13 of the Franchise Act (815 ILCS 710/13 (West 2002)), which would be determined at a later hearing. On administrative review, the circuit court confirmed the Board's decision.

¶ 4 On appeal to this court, we declined to address the parties' arguments regarding attorney fees, concluding that the issue was not yet ripe for our review because the Board had yet to determine the amount. *General Motors Corp. v. The Motor Vehicle Review Board*, 361 Ill. App. 3d 271, 291, 836 N.E.2d 903, 920 (2005) (*GMC I*). In so concluding, we (1) vacated the circuit court's confirmation of the Board's attorney-fee decision, (2) affirmed the court's confirmation of the Board's remaining decisions, and (3) remanded the cause to the Board with directions to address the attorney-fee issue. *Id.* The Supreme Court of Illinois later affirmed this court's decision. *General Motors Corp. v. The State of Illinois Motor Vehicle Review Board*, 224 Ill. 2d 1, 32, 862 N.E.2d 209, 229 (2007) (*GMC II*).

¶ 5 In March 2007, the prevailing dealerships filed a motion for attorney fees, expert fees, and costs, which was subsequently amended, seeking total reimbursement of approximately

$1,033,607 from GMC. In March 2008, the Board granted the dealerships' motion and awarded them $1,033,607 in attorney fees. On administrative review, the circuit court confirmed the Board's decision.

¶ 6 GMC appeals, arguing that (1) the dealerships waived their respective request for additional attorney fees by failing to comply with the 10-day filing deadline imposed by section 1001.770(e)(3)(A) of title 92 of the Illinois Administrative Code (Administrative Code) (92 Ill. Adm. Code 1001.770(e)(3)(A) (1999)); (2) the Board erred by awarding attorney fees because the dealerships failed to show GMC engaged in wrongful conduct as required by section 13 of the Franchise Act; (3) as applied in this case, section 13 of the Franchise Act violates due-process, equal protection, and the prohibition against special legislation; and (4) even if the dealerships were entitled to fees for the circuit court proceedings, they were not entitled to attorney fees and costs associated with their respective appeals.

¶ 7 We disagree that the dealerships waived their request for additional attorney fees. However, because we agree that section 13 of the Franchise Act requires a finding of "an unfair or deceptive act or practice declared unlawful" before the Board can award attorney fees, we reverse.

¶ 8 I. BACKGROUND

¶ 9 A. Preliminary Matter

¶ 10 As a threshold matter, we note that, in its brief to this court, GMC contested the Board's award of $1,033,607 in attorney fees, which was to be distributed among the four dealerships as follows: $321,782 to Muller; $230,124 to Mitchell; $242,817 to Grossinger; and $238,884 to Castle. However, on the eve of oral arguments in this case, GMC informed this

court that it had reached a settlement with Grossinger and Castle. As a result, the only issues presented to this court during oral arguments concerned GMC's aforementioned claims, attacking the Board's award of attorney fees in favor of Muller and Mitchell, which totaled $551,906. Accordingly, we limit the following discussion and our conclusion to the Board's award of $551,906 in attorney fees to Muller and Mitchell (hereinafter, the protesting dealerships).

¶ 11 B. The Circumstances That Prompted This Appeal

¶ 12 In February 2001, GMC sought to add a new franchise to two existing Illinois automobile dealerships, specifically, a GMC franchise at Jacobs in Chicago, a Buick dealership, and a second GMC franchise at Loren in Glenview, another Buick dealership. In pursuit of that goal, GMC informed existing dealerships located within a 10-mile radius of the proposed expansions of its intent pursuant to section 4(e)(8) of the Franchise Act (815 ILCS 710/4(e)(8) (West 2000)). That section of the Franchise Act also permits an affected dealership to file a protest when, as in this case, a manufacturer attempts to establish a new franchise within the existing dealer's "relevant market area." *Id.* See also 815 ILCS 710/2(q) (West 2000) (" 'Relevant Market Area' [is] the area within a radius of 10 miles from the principal location of a franchise or dealership."). Pursuant to that provision, the protesting dealerships timely filed their objections to GMC's planned expansion at Loren.

¶ 13 During 19 days of hearings conducted from May to December 2002, the parties presented evidence to an administrative hearing officer in support of their respective positions. In May 2003, the hearing officer recommended that the Board grant the protests because GMC had failed to show "good cause" existed to establish the new franchises as required by section 4(e)(8) of the Franchise Act (815 ILCS 710/4(e)(8) (West 2000)). See 815 ILCS 710/12(c)

(West 2000) (outlining 11 factors that must be considered to determine whether a manufacturer has met its good-faith burden).

¶ 14 On September 3, 2003, the Board issued a "final order" that (1) accepted the hearing officer's recommendations; (2) ordered GMC to pay $58,673 for Board expenses; and (3) determined that because the protesting dealerships had "substantially prevailed," they were entitled to attorney fees under section 13 of the Franchise Act (815 ILCS 710/13 (West 2002)). The Board's final order was served upon the protesting dealerships by mail. On September 15, 2003, the protesting dealerships timely filed their respective claims for attorney fees.

¶ 15 In October 2003, GMC filed a complaint for administrative review under section 31 of the Franchise Act, which permits "[a]ny person affected by a final administrative decision of the Board" to seek judicial review of that determination (815 ILCS 710/31 (West 2002)). In November 2003, the Board stayed proceedings on the attorney-fee issue, pending resolution of GMC's appeal. Prior to the June 2004 hearing on GMC's complaint, the circuit court granted Loren's motion for leave to file its appearance *instanter* and to adopt GMC's arguments. In July 2004, the court confirmed the Board's decision.

¶ 16 GMC and Loren timely appealed to this court pursuant to the Administrative Review Law (735 ILCS 5/3-101 to 113 (West 2004)), challenging the Board's decision to grant the dealers' protest. Specifically, GMC contested (1) the standard applied, (2) the sufficiency of the evidence, (3) the validity and constitutionality of the Franchise Act, and (4) the award of attorney fees. *GMC I*, 361 Ill. App. 3d at 274-75, 836 N.E.2d at 907-08. A divided panel of this court concluded, in part, that with regard to attorney fees, that issue was not ripe for our review because the Board had yet to determine the amount. *GMC I*, 361 Ill. App. 3d at 289-91, 836

N.E.2d at 919-20. In so concluding, we vacated the circuit court's judgment confirming that award and remanded with directions that the Board address the attorney-fee issue. *GMC I*, 361 Ill. App. 3d at 291, 836 N.E.2d at 920. In all other respects, we affirmed the court's ruling, which confirmed the Board's remaining determinations. *Id*.

¶ 17 Justice Cook dissented, disagreeing, in part, with the Board's decision to award the protesting dealerships attorney fees because the Board did not make a finding that GMC engaged in "an unfair method of competition or an unfair or deceptive act or practice declared unlawful by [section 13 of the Franchise] Act." (Internal quotation marks omitted.) *GMC I*, 361 Ill. App. 3d at 297, 836 N.E.2d at 925 (Cook, J., dissenting); 815 ILCS 710/13 (West 2004).

¶ 18 GMC and Loren later successfully petitioned the Illinois Supreme Court for leave to appeal. On January 8, 2007, the supreme court affirmed this court's judgment. *GMC II*, 224 Ill. 2d at 32, 862 N.E.2d at 229. On February 1, 2007, the Board sent the parties a letter (1) enclosing the Board's September 2003 final order; (2) alerting the parties to the supreme court's January 2007 opinion, which it appended to the letter; and (3) requesting that GMC pay $58,673—the amount the Board had previously levied against GMC for its expenses.

¶ 19 C. The Attorney Fees at Issue

¶ 20 On March 28, 2007, the protesting dealerships filed a "motion for attorneys' fees, expert fees[,] and costs," requesting the assignment of a hearing officer to consider their claim. Following amendments to their motion, the protesting dealerships sought a total reimbursement of approximately $551,906 ($321,782 to Muller and $230,124 to Mitchell). (As previously noted, the Board awarded $1,033,607 in attorney fees; however, only $551,906—the portion awarded to Mueller and Mitchell—is before us on appeal.) At an August 2007 hearing on that

motion, the hearing officer considered the following arguments: (1) the protesting dealerships waived their request for additional attorney fees by failing to comply with the 10-day filing deadline imposed by section 1001.770(e)(3)(A) of title 92 of the Administrative Code; (2) the Board erred by awarding attorney fees because the protesting dealerships failed to show GMC engaged in wrongful conduct as required by section 13 of the Franchise Act; (3) section 13 of the Franchise Act, which authorized the attorney fees, is unconstitutional; (4) even if the protesting dealerships were entitled to fees for the circuit court proceedings, they were not entitled to attorney fees and costs associated with their respective appeals; and (5) the amount of attorney fees requested was unreasonable.

¶ 21 In December 2007, the hearing officer issued a "proposed decision" to the Board, finding as follows: (1) GMC's attorney-fee-waiver claim was without merit, given that the Board stayed the attorney-fee issue pending resolution of GMC's appeals and the protesting dealerships initially complied with the attorney-fee filing requirement, which the parties did not dispute; (2) GMC's argument regarding whether section 13 of the Franchise Act requires a finding of "wrongful conduct" to award attorney fees must be considered in another forum because the hearing officer's discretion was limited to determining only the amount of the attorney-fee award; (3) the Board lacked jurisdiction to address constitutional arguments; (4) the fees incurred by the protesting dealerships were not avoidable and, thus, any award of attorney fees should include fees incurred as a result of later appeals; and (5) the amount of attorney fees requested was not unreasonable, given the complex nature of the litigation. The hearing officer recommended, in pertinent part, that the Board award the protesting dealerships $551,906 in attorney fees.

¶ 22 In March 2008, the Board entered a final order, adopting the hearing officer's

December 2007 proposed decision. In so doing, the Board ordered GMC to pay $551,906 to the protesting dealerships. Thereafter, GMC and Loren filed a complaint for administrative review pursuant to section 31 of the Franchise Act, seeking judicial review of the Board's attorney-fee determination. In October 2008, the circuit court confirmed the Board's decision.

¶ 23 This appeal followed.

¶ 24 II. THE BOARD'S AWARD OF ATTORNEY FEES

¶ 25 A. GMC's Attorney-Fee Waiver Claim

¶ 26 We first address GMC's argument that the protesting dealerships waived their request for additional attorney fees by failing to comply with the 10-day filing constraints mandated by section 1001.770(e)(3)(A) of title 92 of the Administrative Code because if we agree, we need not address GMC's remaining arguments. In this regard, GMC contends that although the protesting dealerships timely filed their initial petitions for attorney fees when the Board issued its September 2003 final order, the protesting dealerships failed to file claims for additional attorney fees when the Board "reserved" them with their second final order on February 1, 2007. For the reasons that follow, we disagree.

¶ 27 1. *The Standard of Review*

¶ 28 "Appellate review of the decision of an administrative agency is of the agency's decision and not the decision of the circuit court." *Summers v. Retirement Board of Policemen's Annuity & Benefit Fund of Chicago*, 2013 IL App (1st) 121345, ¶ 15. When reviewing administrative decisions, this court reviews factual questions under the manifest weight of the evidence standard, questions of law *de novo*, and mixed questions of law and fact under the clearly erroneous standard. *Buckner v. University Park Police Pension Fund*, 2013 IL App (3d) 120231,

¶ 13, 983 N.E.2d 125.

¶ 29 2. *The Administrative Policy at Issue*

¶ 30 Section 1001.770 of title 92 of the Administrative Code, entitled, "Conduct of Protest Hearing," concerns, in part, the procedure a complainant must follow to claim attorney fees after service of the Board's final order. 92 Ill. Adm. Code 1001.770 (1999). Specifically, section 1001.770(e)(3)(A) provides, as follows:

> "A) The complainant shall be allowed to submit to the hearing officer within 10 days after receipt of the final order a detailed motion requesting the payment of the costs allowed under Section 1001.790(b) that it incurred in the hearing process. *** If the complainant fails to submit the motion in a timely manner, the complainant will be deemed to have waived its right to an award of such costs." 92 Ill. Adm. Code 1001.770(e)(3)(A) (1999).

¶ 31 Section 1001.770 of title 92 of the Administrative Code continues, explaining that if the complainant complies with the 10-day deadline for filing an attorney-fee claim and a hearing is conducted on that claim, the following procedure applies:

> "F) The Board shall then review the recommendation of the hearing officer, the pleading filed, any exceptions and briefs, and the recommendation of the monitor. *The Board shall then issue a final order assessing the Board's expenses and awarding attorney's fees and costs to the complainant.* The final order shall be forwarded to the Secretary who shall then serve it upon the parties." (Emphasis

added.) 92 Ill. Adm. Code 1001.770(e)(3)(F) (1999).

¶ 32 3. *The Board's Determination as to GMC's Waiver Claim*

¶ 33 We note that in his December 2007 proposed decision to the Board, which the Board adopted, the hearing officer addressed the parties' disagreement as to what this court meant when it made the following statement in our October 2005 opinion addressing, in pertinent part, the decision to refrain from resolving the parties' attorney-fees issue:

> "Accordingly, we find the attorney-fees issues raised by GMC and Loren are not ripe for judicial review at this time. *** We note our decision does not in any way address the merits of the attorney-fees issues and is not a confirmation of the Review Board's 'award of attorney fees and costs' in the September 2003 final order, as the Review Board's regulations provide such an award is to be made in a *second final order* in cases such as this (see 92 Ill. Adm. Code § 1001.770(e)(3)(F) (Conway Greene CD-ROM April 2001))." (Emphasis added.) *GMC I*, 361 Ill. App. 3d at 291, 836 N.E.2d at 920.

¶ 34 With regard to the aforementioned passage, in particular, this court's reference to a "second final order," GMC made the following argument in support of its position that the Board's February 2007 correspondence constituted a second final order that required the protesting dealerships to refile their claims for additional attorney fees within 10 days of service:

> "Well, our view is it means one of two things. Either it's referencing the fact that there should be a second final order which

> is interesting in that the Board did send out the final order in February [2007], as your honor is aware, or it is saying that the process should begin again and the Board should then have a new final order issued after the hearing examiner conducts his proceedings."

When the protesting dealerships responded that this court's "second final order" statement was plainly addressing the Board's subsequent "final order determining how much the attorney[] fees and costs are," GMC countered that the critical point the protesting dealerships were omitting was that this court's October 2005 opinion vacated the Board's attorney-fee determination.

¶ 35 In rejecting GMC's claim, the hearing officer made the following recommendation to the Board:

> "The appellate court did not dismiss the [protesting dealerships'] pending fee petitions. In fact, the appellate court remanded the case to the Board to address the attorney fee issues. Since the fee petitions were not dismissed but merely stayed during the pendency of the appeal, the [protesting dealerships] did not have to re-file their fee petitions at any time in the future."

¶ 36 4. *Application of the Standard of Review*

¶ 37 As we have previously noted, GMC contends that although the protesting dealerships timely filed their initial petitions for attorney fees when the Board issued its September 2003 final order, they failed to file their claims for additional attorney fees when the Board "reserved" them with their second final order on February 1, 2007. Thus, the narrow issue

we address concerns whether the Board's February 2007 correspondence to the parties constituted a "second final order" that triggered a second 10-day deadline for the petition of additional attorney fees as GMC contends. We conclude that it does not.

¶ 38 We agree with the Board that this court's October 2005 opinion did not vacate the Board's attorney-fee determination. Instead, this court vacated the circuit court's confirmation of the Board's decision that the protesting dealerships were entitled to attorney fees under section 13 of the Franchise Act because the Board had yet to determine the amount of attorney fees. *GMC I*, 361 Ill. App. 3d at 291, 836 N.E.2d at 920. In so doing, we remanded the attorney-fee issue to the Board with directions that it conduct those proceedings and issue a ruling—that is, that the Board issue a second final order ascertaining the amount of such fees—in accordance with section 1001.770(e)(3)(F) of title 92 of the Administrative Code. *Id*.

¶ 39 Here, we view the Board's February 2007 letter as a prudent measure, which, in addition to requesting Board fees from GMC, alerted the parties involved about the supreme court's resolution of GMC's appeal. We do not, however, view the Board's correspondence as a final order for purposes of triggering a 10-day limitation on a contestant's ability to file petitions for additional attorney fees incurred as a result of subsequent appeals. We caution, however, that our rejection of GMC's narrow claim in no way addresses (1) if a timeliness provision does or should apply to the request of such additional fees or (2) whether attorney-fee awards for costs incurred for appeals are permitted by section 13 of the Franchise Act. Our conclusion rejects only GMC's specific claim that the Board's February 2007 letter constituted a final order that placed a time constraint on the protesting dealerships' ability to request additional attorney fees under section 1001.770 of Title 92 of the Administrative Code. Accordingly, we conclude that

the Board's rejection of GMC's claim in this regard was not clearly erroneous.

¶ 40 B. GMC's Claim That the Board Erred by Awarding Attorney Fees

¶ 41 GMC next argues that the Board erred by awarding attorney fees because the protesting dealerships failed to show GMC engaged in wrongful conduct as required by section 13 of the Franchise Act. We agree.

¶ 42 1. *The Statute at Issue and the Standard of Review*

¶ 43 Section 13 of the Franchise Act, provides as follows:

> "Damages; equitable relief. Any franchisee or motor vehicle dealer who suffers any loss of money or property, real or personal, as a result of the use or employment by a manufacturer *** of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by this Act, or any action in violation of this Act, may bring an action for damages and equitable relief, including injunctive relief, in the circuit court of the county in which the objecting franchisee has its principal place of business ***. If the misconduct is willful or wanton, treble damages may be awarded. A motor vehicle dealer, if it has not suffered any loss of money or property, may obtain permanent equitable relief if it can be shown that the unfair act or practice may have the effect of causing such loss of money or property. Where the franchisee or dealer *substantially prevails* the court or arbitration panel or Motor Vehicle Review Board shall award attorney's fees and

assess costs, including expert witness fees and other expenses incurred by the dealer in the litigation, so long as such fees and costs are reasonable, against the opposing party. Moreover, for the purposes of the award of attorney's fees, expert witness fees, and costs whenever the franchisee or dealer is seeking injunctive or other relief, the franchisee or dealer may be considered to have prevailed when a judgment is entered in its favor, when a final administrative decision is entered in its favor and affirmed, if subject to judicial review, when a consent order is entered into, or when the manufacturer *** ceases the conduct, act or practice which is alleged to be in violation of any Section of this Act." (Emphasis added.) 815 ILCS 710/13 (West 2010).

Because this case requires us to interpret section 13 of the Franchise Act, our review is *de novo*. *People v. Davis*, 2012 IL App (4th) 110305, ¶ 12, 966 N.E.2d 570 (discussing *de novo* review of section 2-1401 petition dismissal).

¶ 44 2. *The Principles of Statutory Construction*

¶ 45 The Illinois Supreme Court has recently reiterated the principles of statutory construction, explaining as follows:

"The principles guiding our analysis are well established. Our primary objective is to ascertain and give effect to legislative intent, the surest and most reliable indicator of which is the statutory language itself, given its plain and ordinary meaning. [Cita-

> tion.] In determining the plain meaning of statutory terms, we consider the statute in its entirety, keeping in mind the subject it addresses and the apparent intent of the legislature in enacting it. [Citation.] Where the language of the statute is clear and unambiguous, we must apply it as written, without resort to extrinsic aids to statutory construction. [Citation.]
>
> If the language is ambiguous, making construction of the language necessary, we construe the statute so that no part of it is rendered meaningless or superfluous. [Citation.] We do not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the expressed intent. [Citation.] The traditional canons or maxims of statutory construction are not rules of law, but rather are merely aids in determining legislative intent and must yield to such intent." (Internal quotation marks omitted.) *People v. Giraud*, 2012 IL 113116, ¶ 6, 980 N.E.2d 1107.

With these principles in mind, we turn to GMC's argument.

¶ 46 3. *The Board's Award of Attorney Fees*

¶ 47 The plain language of section 13 of the Franchise Act begins by identifying who can bring an action for "damages and equitable relief" pursuant to section 13 of the franchise Act—that is, "[a]ny franchisee or motor vehicle dealer." 815 ILCS 710/13 (West 2010). The statute then segregates that franchisee or motor vehicle dealer into one of two financial catego-

ries. *Id.* Either the motor vehicle dealer (1) has suffered a loss of money or property, real or personal, or (2) has not suffered any loss of money or property. *Id.* The statute continues further that for those motor vehicle dealers that have lost money or property, the cause of their loss must have resulted from "the use or employment by a manufacturer *** of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by this Act, or any action in violation of this Act." *Id.* For those motor vehicle dealers that cannot show an actual loss of money or property, they can still recover damages "if it can be shown that the unfair act or practice may have the effect of causing such loss of money or property." *Id.* Indeed, if a manufacturer's "misconduct" is "willful or wanton," section 13 of the Franchise Act permits the award of treble damages. *Id.* Thus, the plain language of the first three sentences of section 13 of the Franchise Act clearly conveys that a motor vehicle dealer can seek damages from a manufacturer that has engaged in misconduct or a violation of the Franchise Act if the dealer can show actual or foreseeable financial losses as a result of the manufacturer's misconduct.

¶ 48 As previously noted, GMC argues that the Board erred by awarding attorney fees because the protesting dealerships failed to show GMC engaged in wrongful conduct as required by section 13 of the Franchise Act. In response to GMC's argument, the protesting dealerships focus on the fourth sentence of the statute, which provides as follows:

> "Where the franchisee or dealer *substantially prevails* the court or arbitration panel or Motor Vehicle Review Board shall award attorney's fees and assess costs, including expert witness fees and other expenses incurred by the dealer in the litigation, so long as such fees and costs are reasonable, against the opposing party."

(Emphasis added.) 815 ILCS 710/13 (West 2010).

¶ 49 Relying primarily on the term "substantially prevails," the protesting dealerships contend that "the statute provides that a dealer whose claims are before a court (or arbitration panel or the Board) may recover fees where he 'substantially prevails'—not on any claim ever, simply for being before the court, but only where (in this case) a final decision is entered *in its favor*." (Emphasis in original.) In other words, the protesting dealerships contend that section 13 permits the award of damages in at least the following two scenarios: (1) when the complainant can prove the manufacturer engaged in misconduct or (2) when the complainant substantially prevails against the manufacturer in any claim brought under the Franchise Act. We conclude that this interpretation of section 13 of the Franchise Act is flawed.

¶ 50 Given the parties' respective positions, our task concerns whether the phrase "substantially prevails" refers back to the aforementioned misconduct by the manufacturer, as GMC contends, or if that term introduces a separate and distinct cause of action that applies to any proceeding where the complainant substantially prevails, as the protesting dealerships contend. In making that determination, we are mindful of the canon of statutory construction that we construe the statute so that no part of it is rendered meaningless or superfluous. In this vein, we do not find the protesting dealerships' claim persuasive because if we were to accept it, doing so would essentially eliminate the first three sentences of the statute, rendering them superfluous.

¶ 51 In this case, the Board—in its September 2003 final order—determined that because the protesting dealerships substantially prevailed in their protest against GMC's proposed expansions—that is, that GMC failed to show good cause existed for its proposal—they were entitled to attorney fees. Thus, under the protesting dealerships' logic, and as this case shows,

attorney fees can be awarded when a manufacturer, who otherwise follows the procedures delineated in the Franchise Act in good faith, does not prevail in its efforts to establish another franchise because of a failure to show good cause.

¶ 52 If this is what the General Assembly intended, initially segregating complainants by financial situation and requiring a manufacturer's misconduct to garner damages would be nonsensical when substantially prevailing on *any* cause of action brought under the Franchise Act would suffice, regardless of misconduct or actual or potential loss of money or property. Indeed, if merely successfully protesting a franchise expansion would suffice to obtain an award of attorney fees, no reason would exist to identify the motor vehicle dealers by financial status or that the manufacturer engaged in misconduct.

¶ 53 Here, the record shows that the protesting dealerships neither alleged GMC engaged in misconduct nor argued that their respective financial status changed or could have changed as a result of GMC's proposal. And as we have already indicated, the Board made no findings in that regard. Notwithstanding its stance that substantially prevailing on a protest of a franchise expansion alone is sufficient to garner attorney fees, the protesting dealerships also claim as follows:

> "The gravamen of the statute is a manufacturer threatening to add an additional dealer, relocating an existing dealer, or terminat[ing] a dealer, and the whole scheme of the Act is composed the way it is because the legislature deemed that these acts (threatened relocation, addition, or termination of a dealer) are 'unfair acts or practices' contemplated by the Act."

We agree that the Franchise Act serves, in part, to protect dealerships, and by extension, the public, from automobile manufacturers in specific instances, but we disagree that a manufacturer's decision to relocate, add, or terminate an automobile dealership should be viewed as *prima facie* evidence of an unfair act or practice prohibited by the Franchise Act. Legitimate business reasons also exist that may compel a manufacturer to contemplate such action. Manufacturers who choose to do so—believing in good faith that good cause exists to proceed—should not be penalized by paying the attorney fees of protesting dealerships without a showing of misconduct as contemplated by section 13 of the Franchise Act.

¶ 54 We find support for our position in *GMC II*, 224 Ill. 2d at 31, 862 N.E.2d at 229, in which the supreme court stated as follows:

> "Here, we find that the Franchise Act creates a legislative classification by treating existing automobile dealers differently than other kinds of franchise owners. However, the classification is related to the legitimate government purposes of redressing the disparity in bargaining power between automobile manufacturers and their existing dealers and of protecting the public *from the negative impact of harmful franchise practices* by automobile manufacturers." (Emphasis added.)

¶ 55 Accordingly, we vacate the circuit court's judgment confirming the Board's award of attorney fees in the protesting dealerships' favor and reverse the Board's determination in that regard.

¶ 56 Because we have so concluded, we need not address GMC's remaining arguments

that (1) as applied in this case, section 13 of the Franchise Act violates due-process, equal protection, and the prohibition against special legislation; and (2) even if the protesting dealerships were entitled to fees for the circuit court proceedings, they were not entitled to attorney fees and costs associated with their respective appeals. Both arguments pertain to the Board's award of attorney fees, which we have determined the Board awarded erroneously. See *In re Karen E.*, 407 Ill. App. 3d 800, 804, 952 N.E.2d 45, 50-51 (2011) (citing *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009)) ("Generally, Illinois courts do not decide moot issues, render advisory opinions or consider issues where the outcome will not be affected by how the issues are decided.").

¶ 57 III. CONCLUSION

¶ 58 For the reasons stated, we reverse.

¶ 59 Reversed.