

Rather Case Victory Shows Value of Dealer Unity

By Michael W. Dunagan

Dealer Gary Sayre was one of many Dallas-area dealers who were paid visits by a private process server in March of 2002. Sixty-one dealers were named as defendants in the initial class action suit filed by a group of plaintiff's attorneys who had targeted Texas buy-here-pay-here dealers. Despite every effort that he and his fellow dealers had made to comply with the admittedly complex federal and state laws and regulations, Sayre was accused of misleading and defrauding his customers by charging interest on deferred sales tax and by generally over-charging on his contracts.

The case of *Rather vs. Dallas Automotive* (the case was named for the first plaintiff and the first defendant listed in the suit) is a classic demonstration of the danger that lurks out there for every car dealer. As a class-action suit with multiple plaintiffs, it held the potential to bankrupt honest, law-abiding businessmen who had built successful businesses from the ground up.

But, more importantly, *Rather vs. Dallas Automotive* has served as a shining example of what a group of smart, unified dealers can achieve when they are organized, focused, and intent on standing their ground in the face of adversity. The Dealer Class-Action Defense Task Force's efforts came to fruition when the last dealer-defendant was dropped in February, officially bringing an end to *Rather vs. Dallas Automotive*. (All of the dealer-defendants who were part of the group has also been dropped from the related Fort Worth case, although the Fort Worth case and the related San Antonio case are still ongoing as this is written.)

The two-year journey through the class-action litigation minefield began in January of 2002 when dealers were notified by some of their customers that letters had been sent accusing the dealers of over-charging. The letters, which were addressed to persons who had purchased vehicles from

buy-here-pay-here dealers in the previous years, invited the recipients to sign and return the letters to the plaintiff's attorneys who would sue the dealers and obtain refunds, all at no cost to the consumer.

Rumors had been spreading for months about a planned class-action suit against dealers who were actually charging interest on deferred sales tax, but most of the dealers clearly did not charge interest on deferred sales tax. When those dealers called the law firm that sent the solicitation letters, they were informed that it could be proved that the dealers were making illegal charges and they should make arrangements to pay up.

Most of these dealers were using software that had been approved by the Office of Consumer Credit Commissioner and were using approved contract forms that clearly showed that deferred sales tax was subtracted from the amount financed before finance charge was calculated. By March, the private process server began making his rounds, delivering suit papers to confused and disbelieving dealers.

It became clear immediately that the suit weren't just targeted toward a few renegade dealers who were trying to pick up some extra bucks. Some very knowledgeable and compliance-conscious dealers were included as defendants. Many dealers who weren't named in the suit knew they were vulnerable because they used the same software and forms as the defendants.

By the time Sayre called me for advice, I was aware of the scope and the nature of the claims. I was also as befuddled as the dealers were. But one thing seemed clear. Either the plaintiff's attorneys knew something we didn't know or they were just wrong. The other thing that was crystal clear to me and was my first recommendation to Sayre: Hire the best and most powerful defense counsel you can whether you can afford it or not. After we had interviewed two prominent law firms, and gotten retainer quotes and estimates, Sayre started crunching the numbers. While each dealer would be hard-pressed to afford the high-dollar and long-term cost of defense, a large group of dealers could pool their resources and take advantages of

economies of scale. For a relatively small monthly payment, dealer defendants could be part of major defense effort that was coordinated and competent.

Sayre enlisted Robert Milligan, Blake Ingram, and Phil Lathrop to help coordinate the group. The committee members put up the initial money to fund the group and gave countless hours of time away from their businesses to spread the gospel. The Dallas County Automobile Dealers Association, under president Hal Hammond, helped set up a meeting to which all dealers were invited. Almost 200 dealers and some attorneys attended and heard Sayre's and the committee's pitch: "United, we can defeat this thing. Divided, they'll pick us off one at a time." A majority of the dealer defendants signed on and the law firm of Locke, Liddell & Sapp was retained. The firm had been representing new car dealers in class-action litigation over vehicle inventory tax and had successfully represented dealers and auctions in challenging the \$225 import fee the legislature had passed.

Within weeks, suits were filed in Fort Worth, San Antonio, Austin, Beaumont, and Houston (although the Austin, Beaumont and Houston suits were filed as individual suits, not class actions). Over 250 dealers state-wide were now defendants. Many of the defendants in the Fort Worth suit jointed the Task Force. Appeals were made at meetings set up by TIADA in the affected cities, and many dealers who weren't named in any suit contributed to the cause.

The first order of business in the Dallas suit was to fight the plaintiffs' demand that all contracts and sales files for the past several years be produced. We were successful in having discovery limited to records on the named plaintiffs. Next, the defense pushed the plaintiffs to explain how a dealer who wasn't charging interest on deferred sales tax could be accused of doing so. The plaintiffs' focus would eventually change from interest on deferred sales tax to a series of technical contract violations. It had become apparent that the plaintiffs were backing off their original central theme and

the threat of a certified class was diminishing.

Initially, dealers were dropped from the suit in groups. Then, toward the end, our attorneys convinced the plaintiffs to drop the rest, one at a time.

Many things happened during the two-year life span of the Rather case, and not all were good. For one, two of the group's initial members died. There's little doubt that many dealers and their families experienced accelerated aging and lost sleep over the threat of financial devastation. For some, plans for expansion and renewal of credit lines were impaired by the legal cloud.

But as the dust settles and we are able to put things back into perspective, one silver lining shines through with undisputed brilliance. When a dedicated group of dealers brings its collective skills and abilities to a task, no matter how daunting, let no man or beast get in the way. I'm just glad I was on the right side.