

BIG R ENTERPRISES, INC.
d/b/a Big R Auto Sales
2711 Governors Drive
Huntsville, Alabama 35805,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Petitioner,

DOCKET NO. MISC. 97-148

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department notified Big R Enterprises, Inc., d/b/a Big R Auto Sales ("Petitioner"), that it was revoking the Petitioner's motor vehicle dealer's license. The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, 40-2A-8(a). A hearing was conducted on May 19, 1997. Richard Hughes and R.D. Ferguson represented the Petitioner. Assistant Counsel John Breckenridge represented the Department.

The issue in this case is whether the Department's proposed revocation of the Petitioner's motor vehicle dealer's license should be affirmed.

The Petitioner owns and operates an automobile dealership in Huntsville, Alabama. A Department enforcement officer visited the Petitioner's business, and discovered that the Petitioner had approximately 18 "skipped or open certificates of title." That is, the assignment of title section on the back of the titles was signed by the seller only. The Petitioner was not listed as purchaser.

The Department notified the Petitioner on February 13, 1997 that its motor vehicle dealer's license was being revoked because of the open titles. The Petitioner timely appealed.

Code of Ala. 1975, 40-12-396(b)(3) authorizes the Department to revoke a motor vehicle dealer's license if the dealer accepts an open assignment of title that does not properly identify the dealer as the purchaser or assignee of the vehicle.

The Petitioner in this case acknowledges that it possessed numerous open titles. The Petitioner argues, however, that the open titles were not intentional, and resulted from negligence only. Unfortunately for the Petitioner, the number of open titles involved clearly shows a pattern of accepting and maintaining open titles in violation of the law. The Department's revocation of the Petitioner's license is clearly reasonable under the circumstances, and is affirmed, effective immediately.

The Department's February 13, 1997 letter to the Petitioner states that the Petitioner's license was revoked, effective that date. However, 40-12-396 specifies that the Department may only revoke a license "subject to the appeal provisions allowed in Chapter 2A of this Title 40."

Code of Ala. 1975, 40-2A-8 requires the Department to notify the licensee that any proposed revocation of a license may be appealed to the Administrative Law Division within 30 days. Section 40-2A-8(b) specifies that the "Department may proceed with the intended action" if the licensee fails to appeal within the required 30 days.

If the licensee timely appeals, as in this case, the statute envisions that the revocation is not effective until the licensee's appeal is finally decided. Otherwise, the licensee would be effectively deprived of his established right and ability to conduct business without immediate recourse. Even if the licensee won on appeal, he would be harmed by not being allowed to conduct business until the appeal was finally decided. An

analogous situation would be if the Department, upon entering a final assessment, immediately executed on the taxpayer's assets. The Department's stated policy is to delay collection efforts until the taxpayer's appeal period has run, except in jeopardy assessment situations where the Department has evidence that the taxpayer intends to remove his assets from the State.

The Department could argue that the State would be irreparably harmed if the licensee is allowed to continue operating. But if irreparable harm can be proved, the Department may immediately file an action in circuit court enjoining the licensee from doing business pending the outcome of any administrative appeal.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, 40-2A-9(g).

Entered June 3, 1997.

BILL THOMPSON
Chief Administrative Law Judge

BT:dr

cc: John J. Breckenridge, Esq.
Richard Hughes
Floyd Atkins