JONES FERRELL
d/b/a J & L Motors
264 Dug Hill Road
Brownsboro, AL 35741,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

' ' ' ' '

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NOS. MISC. 97-214
MISC. 97-236

FINAL ORDER

The Revenue Department assessed privilege license tax against Jones Ferrell ("Taxpayer") for the year October 1995 - September 1996. The Department also notified the Taxpayer that it intended to revoke his current used motor vehicle dealer's license. The Taxpayer appealed to the Administrative Law Division, and a hearing was conducted on July 29, 1997. The Taxpayer represented himself. Assistant Counsel Wade Hope represented the Department.

This case involves two issues:

(1) Did the Department properly assess the Taxpayer for the penalty levied at Code of Ala. 1975, '40-12-29 for failing to comply with the used motor vehicle dealer's license provisions at Code of Ala. 1975, '40-12-390 et seq.; and

(2) Should the Taxpayer's used motor vehicle dealer's license be revoked pursuant to Code of Ala. 1975, '40-12-396.

The Taxpayer has operated as a licensed used motor vehicle dealer in Alabama since the mid-1960s. The Taxpayer's current business is located at his residence in Brownsboro, Alabama.

In October 1996, the Taxpayer put several of his cars for sale on a vacant lot on Highway 431 South in Brownsboro. The Revenue Department inspected the location and notified the Taxpayer that the lot did not have a proper sign, as required by Code of Ala. 1975, ' 40-12-392, and that he had failed to obtain a supplemental license for the second lot, as required by Code of Ala. 1975, ' 40-12-395. The Department allowed the Taxpayer 10 days to comply, and also warned the Taxpayer that he would be fined up to $1000 if he failed to timely comply.

The Department reinspected the location after the 10 days had expired, and discovered that the Taxpayer had failed to either move his vehicles or comply with the law. The Taxpayer concedes that he failed to move the vehicles or get a license and sign for the second lot within the 10 day period. The Department accordingly assessed the Taxpayer the $1000 penalty levied at ' 40-12-29. The Taxpayer appealed the penalty to the Administrative Law Division.

The Department subsequently received notice that the Taxpayer had been found guilty by the U. S. District Court in Kentucky in 1975 of "transporting or causing to be transported a stolen motor vehicle." The Taxpayer had indicated on his license renewal application that he had never "knowingly dealt in stolen vehicles." The Department accordingly notified the Taxpayer that his license was being revoked pursuant to ' 40-12-396(b) because he had falsified his application. The Taxpayer also appealed the proposed revocation to the Administrative Law Division.

Section 40-12-29 levies a penalty of $500 - $1000 on any person who willfully fails to comply with the licensing requirements at ' 40-12-390, et seq. In this case, the Taxpayer

admittedly failed to comply with the licensing requirements within the 10 days allowed by the Department. The Department consequently assessed him the $1000 penalty. Given those disputed facts, I can only find that the Taxpayer willfully failed to comply with the law. The final assessment is affirmed.

Concerning the proposed revocation of the Taxpayer's dealer's license, the Department may revoke a dealer's license for "willful and intentional failure of the licensee" to comply with the licensing requirements of Article 8, Chapter 12, Title 40, Code of 1975. See, ' 40-12-396.

The Department argues that the Taxpayer willfully and intentionally falsified his application by answering "no" to the question of whether he had ever knowingly dealt in stolen vehicles.

The Taxpayer concedes that he plead guilty to a charge of conspiracy to deal in stolen property in 1975. However, the property involved was a riding lawn mower and a farm implement. The Taxpayer testified that he never considered those items to be stolen vehicles, and thus answered "no" to the question on his application.

The evidence is sufficient that the Taxpayer did not knowingly and willfully falsify his license application. In addition, the Alabama Supreme Court has held that one violation by a license applicant that occurred twenty-five years in the past should not prevent an otherwise qualified applicant from receiving a license. Benton v. Ala. Bd. of Medical Examiners, 467 So.2d 234 (1985).

In Benton, a physician applied for an unrestricted controlled substance license twenty-five years after her license had been restricted for a violation. The Court granted the license, as follows:

> We note on this point that the Board has never offered proof, at any time, that Dr. Benton actually dispensed narcotics to her patients other than her abnormally large orders of schedule II drugs some twenty-five years ago. Furthermore, the evidence is unrefuted that Dr. Benton has had no personal troubles with narcotics in twenty-five years, and has not misprescribed any drugs, schedule II or otherwise, in twenty-five years. We must conclude that in light of such evidence, twenty-five years is more than a sufficient penalty for her past offense. Any further restriction of Dr. Benton's prescription rights would be unduly harsh and oppressive.

The above rationale also applies in this case. For a similar result, see also State of Alabama v. Sims, Admin. Law Div. (7/11/89).

For the above reasons, the Taxpayer's dealer's license should not be revoked. Judgment is entered against the Taxpayer for $1000.

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

Entered September 8, 1997.