

JOHN MOTORS, INC.
1060 TUSCALOOSA AVENUE
GADSDEN, AL 35901,

Petitioner,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MV. 07-396

FINAL ORDER DENYING DEPARTMENT'S APPLICATION FOR REHEARING

This case involves the Department's proposed revocation of John Motor's ("Petitioner") status as a designated agent of the Department. The proposed revocation is based on the fact that the Petitioner was unable to submit a title application to the Department within ten days, as provided at Code of Ala. 1975, §32-8-35(g). The Petitioner was unable to submit the application because the motor vehicle dealer that the Petitioner purchased the subject vehicle from refused to forward the outstanding title to the Petitioner.

The Administrative Law Division denied the Department's proposed revocation by Final Order entered on August 29, 2007. The Final Order reads in part:

The Petitioner should not lose his designated agent status because another car dealership has refused to give it the title for a vehicle that it has paid for. The Petitioner has made every reasonable effort to rectify the situation, including suing the other dealership. The Department's proposed revocation of the Petitioner's designated agent status is denied.

Final Order at 3.

The Department has timely applied for a rehearing. It argues that the Administrative Law Division improperly substituted its judgment for that of the Department, and that the Administrative Law Division can only reverse a Department decision if that decision is unreasonable or an abuse of discretion. I disagree.

Code of Ala. 1975, §40-2A-9(e) provides that a final order entered by the Administrative Law Division “shall provide such relief as may be appropriate under the circumstances.” Under the particular facts of this case, it is appropriate and just that the Petitioner’s designated agent status should not be revoked. Stated differently, revoking the Petitioner’s designated agent status under the circumstances would be unreasonable and an abuse of discretion.

The Petitioner has been a motor vehicle dealer in Gadsden, Alabama and a designated agent of the Department since 1994. Before the incident in issue, the Department had never cited the Petitioner for not timely submitting a title application or otherwise failing to comply with Alabaman’s motor vehicle title laws.

The Petitioner’s owner, John Crook, testified at the August 24 hearing that if his designated agent status is revoked, he would be forced to close his business. Revoking the Petitioner’s designated agent status and putting him out of business because of a first-time failure to submit a title application within ten days is not appropriate under the circumstances. This is especially true given that the Petitioner was unable to submit the application only because another motor vehicle dealer refused to give it the title for the vehicle.

The Department asserts that the Petitioner improperly sold the subject vehicle before it had possession of the title. I can find no provision in Alabama law, however, nor has the Department cited one, which requires a dealer to have physical possession of a title before it can sell a vehicle. The Petitioner’s representative also points out that as a practical matter, dealers routinely sell vehicles without first having physical possession of

the title. The Petitioner's response to the Department's application for rehearing reads in pertinent part:

Every day, dealers across Alabama sell vehicles and take title applications without having possession of the certificate of title. For example, it is not uncommon for a dealer to sell a trade-in on the same day the dealer received it, despite the fact the dealer has just that day sent the check for the payoff on the trade-in, and will not receive the certificate of title for weeks. Dealers buy cars at auto auctions. The auction company does not send the certificate of title to the dealer until days after the sale and the dealer's check has cleared. Meanwhile, it is not unusual for the dealer to sell the vehicle and take a title application well before receiving the certificate of title.

Petitioner's Response at 6.

The Department claims that the standard of review is whether the Department abused its discretion in revoking a dealer's designated agent status. That necessarily implies that the Department has the discretion not to revoke a dealer's designated agent status for one technical failure to comply with the law. The Department's apparent position, however, is that it has no discretion, and that a single failure by a dealer requires that it revoke the dealer's designated agent status. The Department's blanket refusal to exercise discretion in such circumstances is itself a form of abuse of discretion. Code of Ala. 1975, §32-8-3(b) provides only that the Department "may" revoke a dealer's designated agent status, not that it "shall" or "must."

I recognize that some motor vehicle dealers willfully and/or negligently abuse their authority as designated agents of the Department. In the vast majority of cases involving the Department's proposed revocation of a dealer's designated agent status, the Administrative Law Division has affirmed the Department's decision. See, *Glaze Used Cars v. State of Alabama*, Mv. 06-1086 (Admin. Law Div. 2/15/2007); *Pekolo, Inc. v. State*

of Alabama, Mv. 06-314 (Admin. Law Div. 9/5/2006); *BBB Auto Sales, LLC v. State of Alabama*, Mv. 06-448 (Admin. Law Div. 8/22/2006); and *D Auto Group v. State of Alabama*, Mv. 06-148 (Admin. Law Div. 4/25/2006), to name only a few. This case is clearly different from those prior cases because the Petitioner has willingly cooperated with the Department and made every reasonable effort to comply with the law.

The Department's application for rehearing is denied.

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

Entered October 16, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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