

AUTOHAUS NATION, INC.  
C/O TERRY P. WILSON, ESQ.  
1785 TALIAFERRO TRAIL  
MONTGOMERY, AL 36117,

Petitioner,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MV. 09-1010

### FINAL ORDER

Autohaus Nation, Inc. ("Petitioner") applied to the Montgomery County Probate Judge for a dealer license tag pursuant to Code of Ala. 1975, §40-12-264. The Probate Judge refused to issue the tag, and the Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a). A hearing was conducted on February 18, 2010. Terry Wilson represented the Petitioner. Assistant Counsel John Breckenridge represented the Department.

The Petitioner has operated an automobile dealership the State of Indiana for several years. It applied to the Department for and received an Alabama automobile wholesale dealers license in August 2009. It also leased offices at 4430 Selma Highway, Montgomery, Alabama in August 2009 from which it intended to conduct business in Alabama. Finally, it obtained the necessary motor vehicle dealers bond and the appropriate liability insurance as required by Alabama law.

The Petitioner applied to have its wholesale dealers license renewed in November 2009. The Department investigated in February 2010 and determined that the license should not be renewed because (1) there was no one at the Petitioner's offices when the license inspector visited the location, and (2) the Petitioner failed to provide proof that the

location had a working telephone. “Therefore, until field audit personnel can determine that this location is indeed a location operated by Autohaus Nation as required by statute, the Severance and License Section cannot issue the company a 2009 – 2010 (wholesale dealers) license.” Department’s 2/17/2010 Interoffice Memorandum, Ex. A.

The Petitioner was not aware that its license renewal application had been denied until it received a copy of the above interoffice memorandum at the February 18 hearing. Consequently, believing that its wholesalers license had been renewed, the Petitioner applied to the Montgomery County Probate Judge for a dealer tag that it intended to use in its automobile wholesale business in Alabama. It also obtained the applicable Montgomery County business license from the Probate Judge’s Office.

Personnel in the Probate Office inquired with the Petitioner’s representative, Dragan Dubak, as to where he intended to use the dealer tag. He responded that he currently operated throughout the United States, but that he had not yet operated in Alabama because he did not have the dealer tag needed to transport a vehicle on the highways of Alabama. The Probate Office consequently refused to issue the Petitioner a dealer tag because it understood that the Petitioner did not intend to use the tag in Alabama. The Petitioner appealed to the Administrative Law Division.

As indicated, this appeal initially involved whether the Petitioner should be issued a dealer tag. But after learning at the February 18 hearing that the Department had refused to renew its wholesale dealers license, the Petitioner now also contests that action by the Department.

The Petitioner’s representative is a businessman with an existing automobile dealership in Indiana. He wants to expand his business into the Southeast, and specifically

into Alabama. The evidence shows that he has rented office space in Montgomery, with an option to purchase the facility. His company's name is on the office door, he has an operating telephone at the office, and he keeps the few records he currently has at the office. He has also obtained the required bonds necessary to operate as a motor vehicle wholesaler in Alabama. He initially also obtained the necessary liability insurance, but has allowed the policy to lapse pending this appeal. But other than currently not having the required insurance, he has satisfied all of the §40-12-390, et seq. requirements to be licensed as a motor vehicle wholesaler in this State.

The Department's refusal to renew the Petitioner's wholesale dealers license was based on a misunderstanding or miscommunication between the parties. The Petitioner's representative explained at the February 18 hearing that because the business cannot currently operate in Alabama without a dealer tag, no one is permanently stationed at his office in Montgomery. Consequently, according to the representative, he asked the Department to telephone the business at the number on the license application so that an appointment could be scheduled for the Department to inspect the office. Unfortunately, the Department's field examiner apparently was not aware that an appointment was necessary, and therefore visited the facility when no one was there. The Department's February 17, 2009 interoffice memorandum reads in pertinent part as follows:

On February 11, 2010, the Field Audit Section investigated the above location and found that it is a vacant building, and that it appeared to be abandoned with no activity. The field examiner could not make contact with anyone; however, Autohaus Nation, Inc. name was on one of the doors. In addition to this information, Linda Dickey with the Montgomery County License Inspector's office informed the Motor Vehicle Division that Autohaus did not lease the building at the location provided on their dealer license application. According to Ms. Dickey, Palmer Properties (building owner) verified that the building was not leased to Autohaus, and she also stated

that Autohaus told Palmer Properties that they would sign the lease once they were issued dealer tags.

Contrary to the above findings, the evidence shows that while the Petitioner's office in Montgomery may have been unmanned when the field inspector visited the site on February 11, the building had not been abandoned, and the field examiner could have contacted the Petitioner's representative if he had called the telephone number on the Petitioner's license application. The Petitioner also submitted a signed lease at the February 18 hearing showing that on August 15, 2009, it had leased the building at 4430 Selma Highway from Pavco LLC for a term of one year. Apparently, someone had incorrectly informed the Montgomery County License Inspector's Office that Palmer Properties owned the subject building and had not leased the building to the Petitioner.

The Department in good faith denied the Petitioner's wholesale dealers license renewal application based on the information it had at the time. As indicated, however, the evidence establishes that the Petitioner has leased and has not abandoned the offices at the above address. It has otherwise satisfied all of the other requirements needed to be licensed as a motor vehicle wholesaler in Alabama, except that the Petitioner did not renew its liability insurance because it could not legally operate in Alabama.

The Department should, within 10 working days, make an appointment with the Petitioner's representative to inspect the Petitioner's offices on the Selma Highway. The Petitioner should be prepared to provide proof of liability insurance at that time, with all other information and/or documents required to obtain an Alabama wholesale dealers license. If the Petitioner complies with the above, the Department should thereafter issue the Petitioner a wholesale dealers license in due course.

Concerning the dealer tag issue, §40-12-264(b) specifies that any licensed motor vehicle wholesaler may purchase dealer tags. It appears that the Probate Judge refused in good faith to issue the Petitioner a dealer tag because it understood from the Petitioner's representative that the Petitioner intended to use the dealer tag exclusively outside of Alabama.

Although not specified in §40-12-264(d), it is inherent in Alabama law that an Alabama wholesaler must intend to use a dealer tag on the highways of Alabama. Consequently, if the Petitioner intended to use the dealer tag exclusively outside of Alabama, it would not be entitled to a tag. But the evidence indicates that the Petitioner intends to also use the tags to transport vehicles in Alabama. But to start in business in Alabama he must, of course, be issued a dealer tag. The Department conceded at the February 18 hearing that a licensed Alabama wholesaler with an Alabama dealer tag could use the tag to transport vehicles both inside and outside of Alabama, which is what the Petitioner intends to do.

The Montgomery County Probate Office should issue the Petitioner a dealer tag as soon as the Petitioner presents its wholesalers dealers license and reapplies for the tag.

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

Entered March 3, 2010.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: John J. Breckenridge, Esq.  
Terry P. Wilson, Esq.  
Brenda Coone  
Mike Gamble