

ELITE AUTO, LLC	§	STATE OF ALABAMA
40 BIRMINGHAM DRIVE		DEPARTMENT OF REVENUE
COLUMBUS, NJ 08022,	§	ADMINISTRATIVE LAW DIVISION
INTERSTATE AUTO WHOLESALE, LLC	§	DOCKET NOS. MISC. 11-356
47 HARVARD STREET		MISC. 11-357
EVERETT, MA 02149,	§	
Petitioners,	§	
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The above Petitioners applied to the Revenue Department to be licensed as an Alabama motor vehicle rebuilder, reconitioner, and wholesaler. The Department denied the applications, and the Petitioners separately appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a). The cases were consolidated due to the common issue and facts involved in both cases. A hearing was conducted on June 28, 2011. The Petitioners' representatives were notified of the hearing by certified mail, but failed to appear. Assistant Counsel Keith Maddox represented the Department.

As indicated, the Petitioners' both applied to the Department for an Alabama motor vehicle regulatory license. They indicated on their license applications that their permanent business location was on Kirby Road in Oxford, Alabama. A Department examiner visited the location in March 2011 and found several portable buildings approximately eight feet by ten feet in size located a few feet apart on a grassy lot without automobile access. A photograph of some of the buildings is attached to and made a part of this Final Order. After further inspecting the lot and buildings, the Department notified both Petitioners by letter dated March 22, 2011 that their license applications were being denied. The letter to

Interstate Auto Wholesale read in pertinent part as follows:

An on-site inspection of your location at 1235 Kirby Rd, Oxford, AL has been conducted. Based upon investigative findings received by our office, your company does not meet the permanent location requirements. Section 40-12-390(10), Code of Alabama 1975, defines a permanent location as a business that “must be owned, rented, or leased and must be used as an office and a place to receive mail, keep records, and conduct routine business, to include an operable telephone listed with the telephone company under the name of the licensed business.” Our investigation revealed that the building in question was a portable storage container and not a permanent building, as required. In addition, the location has one power pole but no meter is present and no electricity is connected to the pole. There is no entrance to the lot and no telephone land line is connected to any of the buildings. A sign facing the main highway is a wood structure only and contains no information. Furthermore, no vehicles are present on the lot.¹

The Petitioners both used the services of Retail Auto Broker in applying for the regulatory licenses in issue. The Administrative Law Division also conducted a separate hearing on June 28, 2011 that involved another motor vehicle license applicant, Metro Auto Source, Inc., that had used the services of Retail Auto Broker. The Final Order in that case, Docket Misc. 11-331 (Admin. Law Div. 7/25/2011), reads in pertinent part as follows:

As indicated, the Petitioner applied to the Department for a motor vehicle regulatory license in January 2011. On February 25, 2011, a Department examiner visited the location on Kirby Road in Talladega County that was identified on the application as the Petitioner’s proposed place of business. The examiner observed that there was a small, approximately eight by ten foot shed at the location on a one or two acre grassy lot. There was no telephone, electricity, or mail box at the location, and the building was not readily accessible by vehicle.

The Department notified the Petitioner by letter dated March 15, 2011 that its license application was being denied. The letter stated in pertinent part that “[o]ur investigation revealed that the building in question was a portable storage container and not a permanent building. In addition, the required sign was not present. Furthermore, the power and phone lines were not

¹ The March 22 letter to Elite Auto is identical to the above quoted letter to Interstate Auto Wholesale, except that Elite’s address was 1229 Kirby Road.

connected to the building.”

The examiner visited the location again on March 21, 2011, after the Department had received at least two other motor vehicle regulatory license applications that listed the Kirby Road lot as the applicants’ proposed place of business. The examiner found five small sheds side by side on the property at that time. There was a sign that read “Metro Auto Sales,” but the sign was not located on or near the address for that business. There was still no electricity running to the site, and no one was present at the location.

The examiner visited the lot again on June 27, 2011 and observed nine sheds on the lot. A photograph the examiner took of some of the buildings is attached to and made a part of this Final Order. The examiner observed that there was an electricity meter at the site, with extension cords running to at least one of the buildings. There was no indication, however, that the electricity was actually hooked-up, and other than an empty desk, there was no furniture or other items in the buildings that are usually associated with an active business.

The Revenue Department manager in charge of administering motor vehicle licenses testified at the June 28 hearing that the Department has received numerous calls from other States complaining of the large number of Alabama dealer’s tags being used in those States.² The manager went on-line and discovered a website for Retail Auto Broker. The website advertised that Retail Auto Broker would assist anyone in obtaining an Alabama motor vehicle regulatory license. Specifically, the company advertised that it would (1) provide the required Alabama motor vehicle regulatory license application; (2) provide a 10 x 12 building “with your own CAR LOT;” (3) “do mail forwarding on a biweekly basis,” and (4) “you can get **UNLIMITED DEALER PLATES**,” without having to leave your residency. Retail Auto Broker is owned by Rizwan Poonawalla.

The Petitioner used the services of Retail Auto Broker in applying for the regulatory license in issue. Rizwan Poonawalla actually filed the articles of incorporation for the business with the Alabama Secretary of State’s Office in January 2011. Retail Auto Broker also obtained a telephone number for the Petitioner through RingCentral Inc., which is located in San Mateo, California.

² Alabama law currently allows a licensed motor vehicle dealer to obtain an unlimited number of dealer tags for a small \$1.75 fee. Dealer tags are, however, exempted from ad valorem taxes or local issuance fees, and thus are much less expensive than regular tags. Code of Ala. 1975, §40-12-264. The Alabama Legislature amended §40-12-264, effective October 2011, to limit the number of dealer tags available to dealers in an attempt to limit the abuse of unlimited dealer tags.

Code of Ala. 1975, §40-12-392(a) requires that to be issued an Alabama motor vehicle regulatory license, the applicant must maintain “a suitable place from which the applicant can in good faith carry on such business and keep and maintain books and records, necessary to conduct business, which shall be available at all reasonable hours for inspection” by the Revenue Department.

The above requirements are intended to insure that anyone licensed as an Alabama motor vehicle dealer, rebuilder, reconitioner, and/or wholesaler is actually doing business as such in the State. That is, the statute is intended to prevent a person or entity that is not “in good faith” carrying on a motor vehicle business in Alabama from improperly obtaining the benefits that come with an Alabama motor vehicle regulatory license, i.e., unlimited Alabama dealer tags, etc.

The evidence shows that Retail Auto Broker is in substance “selling” Alabama motor vehicle regulatory licenses to individuals and/or entities that do not reside in and may not intend to actually conduct business in Alabama. Retail Auto Broker’s website includes the following statements – “You can also drive around with an insured dealer’s plate and save insurance money. Dealer’s plates are good anywhere! You don’t have to register vehicles under your name but under your dealership name . . . You can do all your work just by sitting at home, . . . If you are not a resident of Alabama does not mean that you can’t obtain a Dealership License in Alabama.” As previously indicated, the website also states in bold letters that “You can get **UNLIMITED DEALER PLATES.**”

An Alabama motor vehicle regulatory license holder is not required to reside in Alabama. As discussed, however, Alabama law does require that the licensee must actually have a physical place of business in Alabama at which the licensee must in good faith regularly conduct business and maintain records. Under the circumstances, leasing a small, prefabricated shed located on an otherwise vacant lot without automobile access does not constitute a permanent and adequate place of business for purposes of obtaining an Alabama motor vehicle regulatory license.

There were at least nine sheds allegedly housing nine different motor vehicle businesses on the Kirby Road lot on June 27, 2011, the last time the Department examiner visited the site. The attached photograph shows that the buildings are spaced a few feet apart in a grassy field. Code of Ala. 1975, §40-12-395 specifies that “[o]nly one licensed dealer shall operate at the same place of business.” It could be argued that a “place of business” constitutes the lot or piece of land on which a business is located. This is especially true concerning motor vehicle dealers, which must have some space “to adequately display one or more motor vehicles offered for sale. . .

.” Section 40-12-392(a). In that case, having nine motor vehicle dealers located side by side in a grassy field clearly violates the intent if not the letter of the §40-12-395 requirement that only one motor vehicle licensee shall operate at a location.

The Petitioner’s owner, Kwame Ofosu, testified that he intends to quit his job in Atlanta by the end of the year, and that he intends to commute from his home outside of Atlanta to his leased building in Talladega County and back each day, which is a two hour drive each way. Upon further questioning, however, he conceded that he did not intend to actually rebuild, recondition, or dismantle automobiles at the location. Rather, he intends to only buy and sell salvage vehicles. “I’m not really going to be rebuilding vehicles, but basically just buying salvage vehicles, esteem vehicles, and selling them to the market.” (T. 15)

The owner argues that with Retail Auto Broker’s help, his business technically qualifies to be licensed as a used motor vehicle dealer, rebuilder, reconditioner, and dismantler in Alabama. I agree that the Petitioner may have acquired a telephone number for the building, and that the building has electricity and may be “permanent” in the sense that it may be anchored or tied down to the ground. I do not believe, however, that the Petitioner intends “in good faith” to conduct business at the site during regular and reasonable business hours, as required to be licensed by the Department. Under the circumstances, the Department correctly denied the Petitioner’s license application.

Metro Auto Source, Misc. 11-331 at 1 – 6.

The Elite Auto and Interstate Auto appeals were filed by individuals that have mailing addresses in New Jersey and Massachusetts, respectively. The appeals are identical in form and content, except for the different business and individual names, and the exact same documents were attached to the appeals, which suggests that the appeals were prepared by the same party, presumably Retail Auto Broker. The gist of the appeals is that the entitles have technically complied with the requirements for obtaining an Alabama motor vehicle regulatory license, i.e., they have a permanent location, a telephone, an identifying sign, etc. But nowhere in the appeal letters or attached documents do the applicants claim that they intend to in good faith actively conduct business and maintain

records at the Kirby Road location in Talladega County on a regular basis. The fact that the applicants have addresses in New Jersey and Massachusetts also indicates that they do not intend to be present and conduct business at the location. Consequently, even if the Petitioners technically complied with the requirements for a motor vehicle license, and they do not because the small buildings on the lot in Talladega County are not adequate under the circumstances, the license applications were correctly denied because there is no evidence that the applicants in good faith intend to regularly conduct business at the location in Alabama. The Department's denial of the license applications is affirmed.

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

Entered July 25, 2011.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

attachment

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