

FRED LANE AUTOMOTIVE
c/o JEFFREY L. INGRAM ESQ.
GALESE & INGRAM, PC
800 SHADES CREEK PKWY, STE 300
BIRMINGHAM, AL 35209,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Petitioner,

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DOCKET NO. MV. 12-974

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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FINAL ORDER

Fred Lane Automotive (“Petitioner”) appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a) concerning the Department’s revocation of its designated agent status. A hearing was conducted on February 21, 2013. The Petitioner’s owner, Tammy Lane, and her attorney, Jeffrey Ingram, attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Petitioner is a designated agent of the Department, and in that capacity has operated a used car dealership in New Market, Alabama for over ten years. The Petitioner also prepared and submitted to the Department motor vehicle title applications on behalf of other businesses and individuals in those years.

In early July 2012, the Department sent representatives to the Petitioner’s place of business and requested information concerning numerous motor vehicles for which the Petitioner had previously submitted title applications. As requested by the Department, Lane compiled and submitted affidavits to the Department explaining how and why the Petitioner had become involved and done the title work on the subject vehicles.

The Department subsequently mailed the Petitioner letters dated July 12, 2012 concerning each of the vehicles in issue. The letters included the following statement:

Section 32-8-35(g), Code of Alabama 1975, as amended requires Designated Agents to submit title applications to the Department within 10 calendar days after agent processes the application. Please be advised that the failure to submit title applications in a timely manner can be construed as a failure to faithfully perform your duties as a Designated Agent of the Department.

The Department notified the Petitioner by letter dated July 25, 2012 that it intended to revoke the Petitioner's designated agent status because "the Department has evidence that you knowingly provided false information on the applications for certificate(s) of title" concerning the subject vehicles. The Petitioner appealed to the Administrative Law Division.

In its Answer submitted on October 3, 2012, the Department for the first time asserted that the "Petitioner sold automobiles as abandoned vehicles when it was known that they were not abandoned vehicles. It also appears that the Petitioner signed documents on behalf of others without authorization." The Department further indicated that it would present evidence "of false and fraudulent motor vehicle title applications being submitted" by the Petitioner.

Tammy Lane testified at the February 21 hearing that for years she has routinely prepared and submitted to the Department title applications for individuals and businesses. She explained that many of her customers could not obtain a title for a vehicle because they were not given a title when they purchased their vehicle, and the person or business that had sold them the vehicle was no longer in business or otherwise could not be located. Lane indicated that in such cases, she understood that she could obtain a title for the customer by following the abandoned motor vehicle procedures.

Lane explained that she had always believed that using the abandoned motor vehicle procedures to obtain a title was in accordance with Alabama law. She testified that she visited Mary Legg in the Madison County Circuit Clerk's office in 2004, and that Ms. Legg confirmed that she could obtain titles by selling vehicles using the abandoned motor vehicle procedures.

Q. Now what made you believe that you could run that as an abandoned vehicle?

Ms. Lane: In 2004 I had went to, roughly there, I had went to the Madison County Circuit Court Clerk, and I had discussed with her the procedures of running abandoned vehicles. I explained to her that I had been contacted through different shops and individuals that was buying things that they couldn't get a title. I told her once they buy vehicles from some of these people, they just disappear and you can't reach them anymore. And I asked her, would the abandoned process work for this, she said yes. I said how these vehicles are not located at my home, they are not at my address of business, we've not seen these. She told me, she said everything's got to match up. The bill, it's basically like we're buying their note, we are representing that individual, we are running it, everything has to be in-line straight down. And I filed, until the Circuit Court stopped filing those, I filed them with her, the same woman, all the time. And she knew, because we discussed it, she knew I did not have these vehicles, and she told me that was the proper way to do it.

ALJ Thompson: Excuse me, if you don't mind. From '04 until 2012, you ran these abandoned –

Ms. Lane: Yes, sir.

ALJ Thompson: -- motor vehicles.

Ms. Lane: Yes, sir.

ALJ Thompson: Now running an abandoned motor vehicle, explain what you do.

Ms. Lane: The first thing we do is we filed the abandoned motor vehicle request form, I get the information back.

ALJ Thompson: With the Department.

Ms. Lane: Yes, sir. Then I send certified letters to everyone involved, lienholders, pending – anybody that's on that paper, I send certified letters to them. We get those back, I run it in the newspaper for the amount of time that we're supposed to run, we run it twice, two weeks, and I believe it's 10 days prior to the date of sale. We do everything according to state law. We do everything, and that's the way I've done it. And of course we filed it in Circuit Court, there were a lot of other pieces of paper, and then when they didn't do it, they limited our paper down, but everything was approved.

(T. 11 – 13).

Alabama law provides that the Department may revoke a motor vehicle dealer's designated agent status if the dealer fails to faithfully perform his duties as a designated agent of the Department. Code of Ala. 1975, §32-8-3(b)(4). But revocation of a dealer's designated agent status for failure to strictly follow the law is not mandatory, and if the Department does revoke a dealer's status, the Administrative Law Division may review the revocation on appeal. Code of Ala. 1975, §40-2A-8(a).¹

The first problem in this case is that the Department's initial letter to the Petitioner indicated that the Petitioner had failed to submit title applications within ten days. There is no evidence, however, that the Petitioner ever failed to timely submit a title application to the Department. Consequently, revoking the Petitioner's designated agent status based on an incorrect or baseless assertion raises due process concerns.

¹ Section 40-2A-8(a) entitles any person aggrieved by an act of the Department to appeal to the Administrative Law Division. If the Division did not have the authority to review the Department's discretionary decision to revoke a dealer's designated agent status, as the Department has argued in prior cases, then the dealer would in substance have no appeal rights, which would clearly be contrary to the Legislature's intent when it enacted §40-2A-8(a).

The Petitioner, through Lane, did improperly use the abandoned motor vehicle procedures to obtain titles for some of her customers. But she did not do so knowing that she was acting improperly or with fraudulent intent, as argued by the Department. Rather, she was told by a county licensing official that she could obtain titles using the abandoned motor vehicle procedures, and she openly did so thinking that she was following Alabama law. She at no time attempted to hide her activities, and when asked to do so by the Department, she fully and truthfully prepared affidavits detailing the specific facts surrounding how and why she became involved with the particular vehicles in issue.

In *John Motors, Inc. v. State of Alabama*, Docket MV. 01-396 (Admin. Law Div. F.O. 9/29/2007; F.O. on Rehearing 10/16/07), the Department revoked a motor vehicle dealer's designated agent status because the dealer had failed to perform his duties as a designated agent. The Department argued that revocation of the dealer's designated agent status was mandatory because the dealer had failed to comply with Alabama law. The Administrative Law Division held that revocation was not mandatory, and that the subject dealer's designated agent status should not be revoked because he had not acted in bad faith or willfully violated the law.

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.

John Motors at 3, 4.

The above rationale applies in this case. As indicated, Lane did not intentionally or fraudulently fail to follow the law because she believed in good faith based on advice from a county licensing official that she was following the law. And before being contacted by the Department in July 2012, she had never before been cited or accused of not faithfully performing her duties as a designated agent. Obviously, Lane is now aware of and on notice as to the law and her duties as a designated agent, but under the circumstances, the Petitioner's designated agent status should not be revoked. Judgment is entered accordingly.

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

Entered April 19, 2013.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Keith Maddox, Esq.
Jeffrey L. Ingram, Esq.
Jay Starling