

DANIELS PAINT & BODY SHOP
P.O. Box 360
Pinckard, AL 36371,

Petitioner,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

§

§

§

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MV. 00-793

FINAL ORDER

The Revenue Department notified Daniels Paint & Body Shop (“Petitioner”) that it was revoking the Petitioner’s status as a designated agent of the Department. The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a). A hearing was conducted on May 27, 2003. The Petitioner’s representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel John Breckenridge represented the Department.

The issue in this case is whether the Department should revoke the Petitioner’s status as a designated agent of the Department. That issue turns on whether the Petitioner failed to faithfully perform its duties as a designated agent.

The Department claims that the Petitioner’s status as a designated agent should be revoked because the Petitioner submitted an erroneous title application concerning a 1998 Volvo, VIN YV1LS5533W1416995.

Robert Flowers purchased the subject Volvo in April 1997. The Department issued him a title in May 1997. The vehicle was wrecked in Dothan, Alabama on August 8, 1998. As a result, Robert Flowers’ insurance company, Cincinnati Insurance, paid Flowers approximately \$29,000 for the vehicle.

The Petitioner subsequently purchased the damaged vehicle through Courtesy Pontiac Cadillac in Dothan, Alabama for approximately \$5,500. Flowers assigned his outstanding title for the vehicle to the Petitioner at that time.

The Petitioner repaired the vehicle and sold it to Michael or Carol Andrews in October 1999. The Petitioner assigned the title to the Andrews, who in turn applied for and received an Alabama title for the vehicle.

In October 2000, Michael Andrews contacted the Department's Motor Vehicle Division concerning the title for the vehicle. Andrews indicated that he had learned that the vehicle may have been declared a "total loss", and that perhaps he should have been issued a "salvage" or "rebuilt" title for the vehicle.

The Department investigated and determined that the vehicle had been a total loss, and that a salvage certificate of title should have been issued for the vehicle. The Department consequently notified the Petitioner that it intended to revoke its status as a designated agent of the Department. The Petitioner appealed.¹

The Petitioner has been in business and a designated agent of the Department since August 1998. The Petitioner's owner, Garret Daniels, contended in a November 21, 2000 letter to the Department, State Exhibit 5, that when he purchased the vehicle, he was told by representatives of Courtesy Pontiac Cadillac that it was not a salvage vehicle. He claimed that normally when he had purchased a salvage vehicle, the insurance company

¹The case was held in abeyance pending the outcome of an action in Houston County Circuit Court concerning the accident in which the vehicle was wrecked. The Administrative Law Division activated the case in March 2003 after learning that the Circuit Court action had been dismissed.

would give him a salvage title. Consequently, his belief that the vehicle was not salvage was reinforced by the fact that Flowers assigned his regular title to the Petitioner at the time of sale. Daniels claimed that he understood that Cincinnati Insurance was only handling the sale for Flowers, and that the sale proceeds were going to Flowers. He also argued that the VIN plate was still on the vehicle, and that the damage to the vehicle was not equal to 75 percent of its fair market value, as required for a wrecked vehicle to be declared a total loss, see Code of Ala. 1975, §32-8-87(d).

The Department concedes that Cincinnati Insurance should have removed the VIN plate and obtained a salvage title for the vehicle. It claims, however, that the Petitioner, as an experienced motor vehicle dealer, should have known when it purchased the vehicle for only \$5,500 that the vehicle was a total loss, and thus should have had a salvage title. The Department also argues that the Petitioner “skipped title” when it took the assigned title directly from Flowers without showing Cincinnati Insurance in the chain of ownership.

Concerning the Department’s “skipped title” argument, if Cincinnati Insurance never owned the vehicle and was only selling it for Flowers, as the Petitioner believed, then the assignment directly from Flowers to the Petitioner was correct.

Concerning the Department’s claim that as an experienced dealer, the Petitioner should have known that the vehicle was a total loss, the Petitioner’s representative explained in his November 21, 2000 letter to the Department that the damage to the vehicle was not close to 75 percent of the value of the car, as necessary for the vehicle to be declared a total loss.

It appears that Cincinnati Insurance is primarily at fault in this case. After it paid Flowers an amount in excess of 75 percent of the value of the vehicle, the insurance company should have applied for a salvage title for the vehicle. Section 32-8-87(b). It failed to do so. Rather, it apparently arranged for Courtesy Pontiac Cadillac to sell the vehicle using Flower's outstanding title. Consequently, when the Petitioner was assigned Flower's regular title for the vehicle, and not a salvage title, it has reason to believe that the vehicle was not a salvage vehicle. The Petitioner's representative also claims in his November 21, 2000 letter that the vehicle did not have sufficient damage to alert him that it was a total loss.

The Department has never before cited the Petitioner for improper conduct or otherwise failing to perform its duties as a designated agent. Under the circumstances, if the Petitioner's representative had testified at the May 27 hearing concerning the claims set out in his November 21, 2000 letter, then perhaps the Petitioner's designated agent status would not be revoked. But because there is no evidence supporting the representative's claims, the Department's revocation of the Petitioner's designated agent status must be affirmed.

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

Entered June 3, 2003.