

JESSIE A. BOMBARA
1656 COUNTY ROAD 213
JEMISON, AL 35085,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 10-279

FINAL ORDER

The Revenue Department assessed Jessie A. Bombara (“Taxpayer”) for State sales tax for June through December 2007, and February 2008. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on November 16, 2010. The Taxpayer attended the hearing. Assistant Counsel Wade Hope represented the Department.

This case involves a final assessment of sales tax entered against the above Taxpayer. The Department had, however, initially assessed the sales tax in issue against Patrick Doss. Doss appealed to the Administrative Law Division, and a hearing was conducted in the case on February 26, 2009. Doss and his grandmother, Wanda Davis, attended the hearing. Assistant Counsel David Avery represented the Department.

Doss and Davis both testified at the February 26 hearing that Doss’s common-law wife, Jessie Bombara, the Taxpayer in this case, was the person that actually owned and operated the store. Davis owns the building in which the store was located. She testified that Bombara leased the building from her for \$800 a month. She also stated that Bombara used her computer to electronically obtain a sales tax license for the business from the Department. Doss and Davis both thought the application was in Bombara’s name only, but it actually also included Doss’s name and social security number. The license was thus

issued in both of their names.

Doss testified that Bombara operated the store, and that he was otherwise employed and had nothing to do with the business.

Based on the above undisputed testimony, the Administrative Law Division entered a Final Order on May 12, 2009 voiding the final assessment against Doss. The Order also indicated that based on the evidence taken at the February 26, 2009 hearing, the Taxpayer in this case was liable for the sales tax in issue.

The Department subsequently assessed the Taxpayer in this case for the unpaid tax. The Taxpayer appealed to the Administrative Law Division, and, as indicated, a hearing was conducted on November 16, 2010.

The Taxpayer testified at the November 16 hearing that she did not own or operate the store, and never applied to the Department for a sales tax license for the business. She explained that she worked at the store for a previous owner, and that she met Doss at the store in 2005. The previous owner closed, and according to the Taxpayer, Doss took over the business in mid-2007.

The Taxpayer claimed that she was never employed at the store. She conceded that she helped out on occasion when needed, but was never paid. She indicated that various of Doss's family members worked at the business, and that Doss's sister closed every night.

The Department asserted at the November 16 hearing that it assessed the Taxpayer only because the Administrative Law Division had stated that she was liable based on the testimony taken at the Doss hearing on February 26, 2009. It further indicated that it did

not believe that the Taxpayer had anything to do with the business except occasionally help out, and that it thus did not believe that she was liable for the sales tax in issue.

It is clear that either Doss or Bombara are liable for the sales tax in issue. And given the conflicting testimony at the two hearings involving the unpaid tax, it is equally clear that one or more individuals that testified at the hearing committed perjury.

The Department's position is that Doss, and not Bombara, should be held liable for the tax in issue. At the February 26, 2009 Doss hearing, the Department argued that Doss was liable based solely on the fact that his name was on the sales tax license. The undisputed evidence taken at the hearing established, however, that Bombara had applied for the license and, unknown to Doss, had included Doss's name and social security number on the application. There was also no evidence that Doss or any of his family members had operated or worked at the business. Based on that evidence, or lack thereof, the final assessment against Doss was voided. The Department did not apply for a rehearing or appeal to circuit court.

The Administrative Law Division perhaps should have entered a Preliminary Order after the Doss hearing allowing Bombara an opportunity to present her side of the story. Unfortunately, that was not done; nor, as indicated, did the Department apply for a rehearing and present evidence that Doss and his family, and not Bombara, operated the business. In any case, under the circumstances, i.e., the Department's position and the evidence at the November 16 hearing indicating that Bombara is not liable for the sales tax in issue, the final assessment against the Taxpayer is voided.

A copy of this Final Order, with copies of the transcripts of both hearings, has been submitted to the Department's Investigations Division for review. That Division should, if it deems appropriate, investigate and determine which individuals gave perjured testimony at the hearings. It should then take whatever action it deems appropriate.

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

Entered February 4, 2011.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
Jessie A. Bombara
Patrick Doss
Joe Cowen
Mike Emfinger
Eddie Crumbley