

J & J AUTO SALES
5385 LOTT ROAD
EIGHT MILE, AL 36613,

Petitioner,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 11-990

FINAL ORDER

The Department revoked the motor vehicle dealer's license previously issued to J & J Auto Sales ("Petitioner"). The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a). A hearing was conducted on May 24, 2012. Jason Steward represented the Petitioner. Assistant Counsel Duncan Crow represented the Department.

The Department revoked the Petitioner's motor vehicle dealer's license because it determined that the Petitioner did not maintain a permanent place of business as a motor vehicle dealer, as required by Code of Ala. 1975, §40-12-392(a).

A Department enforcement officer visited the location listed on the Petitioner's dealer's license to determine if the Petitioner maintained a permanent place of business and otherwise qualified to be a motor vehicle dealer. According to the Department's Answer, the enforcement officer found that another business, West Mobile Auto Parts, was operating at the address. The Answer asserts that the owner of the other business, Ray Jordan, told the officer that the Petitioner had not conducted business at the location for several years. The Department consequently revoked the Petitioner's license.

The Petitioner's owner, Jason Steward, testified at the May 24 hearing that he did have a business location at 5385 Lott Road, Eight Mile, Alabama, which is the business

location listed on his motor vehicle dealer's license. He explained (1) that a large "J & J Auto Sales" sign was on a fence along the highway in front of the location; (2) that he had a telephone (251-649-9133) at the location; (3) that he paid \$350 a month on a ten year lease on the building, and (4) that he had a local business license.

Steward testified that his main source of income was from processing title applications for other dealers, but that he also periodically sells vehicles at the location. He conceded, however, that he is present at the location only two or three times a month, that he receives his mail at a post office box and not at the location for security purposes, and that he kept his business records at his home, not at the business location.

Section 40-12-392(a) specifies that a motor vehicle dealer license application must include certain information, and reads in pertinent part as follows:

The application shall enumerate . . . [t]hat the location is a permanent one; that the location affords sufficient space upon and within which to adequately display one or more motor vehicles offered for sale and that an appropriate sign designates the location as being the place of business of a motor vehicle dealer; that it is 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 commissioner.

"Permanent location" is defined at Code of Ala. 1975, §40-12-390(10) as follows:

A building or structure from which sales of motor vehicles are conducted. . . The building or structure 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.

The Petitioner in some respects did not technically comply with the above requirements because it received its mail at a post office box and not at its leased offices.

The Petitioner's owner also kept his business records at his house, and not at the office.

But it is reasonable that a dealer would for security reasons receive mail at a post office box instead of in a mailbox. The owner also indicated that he could make his records available at the location at any time for inspection by the Department.

The Department revoked the Petitioner's license primarily because someone at the location told the enforcement officer that the Petitioner had not done business at the location in several years. As indicated, the Petitioner's owner disputed that claim at the May 24 hearing. Unfortunately, neither the enforcement officer nor the person that allegedly gave the officer the above information were available to testify at the May 24 hearing. Consequently, there is no evidence supporting the Department's claim that the Petitioner has not operated at the location for several years.

Given the evidence in the case, the Petitioner's motor vehicle dealer's license is reinstated. The Department may, however, investigate in the future for the purpose of determining if the Petitioner is actively operating a motor vehicle dealership at the location stated on its license.

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

Entered June 6, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.
Jason Steward
Janet Stathopoulos
Randy Winkler