

MARTHA DOWNING	§	STATE OF ALABAMA
d/b/a Southern Wholesale		DEPARTMENT OF REVENUE
309 Old Shell Road	§	ADMINISTRATIVE LAW DIVISION
Mobile, AL 36607,		
	§	
Petitioner,		DOCKET NO. MV. 01-298
	§	
v.		
	§	
STATE OF ALABAMA		
DEPARTMENT OF REVENUE.	§	

**FINAL ORDER**

The Revenue Department notified Martha Downing, d/b/a Southern Wholesale (“Petitioner”), that it intended to revoke her 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 January 10, 2002 in Mobile, Alabama. Billy Kimbrough represented the Petitioner. Assistant Counsel Duncan Crow represented the Department.

The issue in this case is whether the Petitioner’s designated agent status should be revoked pursuant to Code of Ala. 1975, §32-8-3(b)(4) because she failed to faithfully perform her duties as a designated agent.

The Petitioner sells used cars in Mobile, Alabama. Lamar Andrews purchased a 1997 Ford from the Petitioner in September 2000. The Petitioner completed a title application for Andrews at that time. She failed, however, to submit the application to the Department by the close of the next business day, as required by Code of Ala. 1975, §32-8-35(g).

In January 2001, Andrews complained to the Department that he had not received a title for the vehicle. The Department had no record of receiving a title application concerning the vehicle, and twice inquired with the Petitioner by mail concerning the title. The Petitioner claims she never received the inquiries because

they were mailed to her old address. In any case, after the Petitioner failed to respond, the Department notified her that her status as a designated agent of the Department was being revoked. The Petitioner appealed.

The Petitioner has been in the car business since 1997. The vehicle she sold to Andrews had been repossessed by a finance company. She had previously sold approximately ten vehicles for the finance company. After each sale, the finance company gave her the title to transfer to the buyer.

The Petitioner testified that after she sold the vehicle to Andrews, the finance company was unable to find the title to the vehicle. The finance company subsequently went out of business. The Petitioner claims that she had been unable to obtain a replacement title for the vehicle, and thus cannot submit the title application to the Department.

All motor vehicle dealers in Alabama are designated agents of the Department for purposes of submitting title applications to the Department. Code of Ala. 1975, §32-8-34. As a designated agent, a motor vehicle dealer that sells a vehicle is required by the close of the next business day to submit to the Department an application for title for the vehicle, and the outstanding certificate of title for the vehicle. Section 32-8-35(g).

The Petitioner testified that on previous occasions when she sold a vehicle for the finance company, the finance company had always given her the title to transfer to the buyer. Unfortunately, the finance company failed to do so concerning the vehicle sold to Andrews. But by selling the vehicle, the Petitioner legally obligated herself to submit the outstanding title to the Department with the title application by the close of the next business day. She failed to do so, and to date has still failed to submit a title application for the vehicle.

The Petitioner also conceded at the January 10 hearing that she has failed to timely submit title applications to the Department on several occasions after the

Andrews sale. Under the circumstances, the Petitioner's designated agent status was properly suspended by the Department. If the Petitioner is successful in working out her title problems with the Department, she can apply with the Department to have her designated agent status reinstated.

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

Entered January 29, 2002.