

JAN 22 2013

INDIANA
SECRETARY OF STATE

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE
AUTO DEALER SERVICES DIVISION

IN THE MATTER OF:)
) Cause No. DLR 12-0203 RO
NATIONWIDE AUTO WHOLESALE)
GROUP, INC., and MICHAEL BACON,)
)
Respondents.)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, JUDGMENT, AND FINAL ORDER**

The Staff of the Office of the Indiana Secretary of State - Dealer Services Division (“Division”), filed a Notice of Default in reference to Respondents, Nationwide Auto Wholesale Group, Inc. (“NAWG”) and Michael Bacon (“Bacon”), for failure to file an answer to the Petition for Order of Revocation and Order of Revocation within the fifteen (15) day time period allotted by the Order of Revocation filed in the above-captioned matter on August 3, 2012.

Having considered the pleadings, the Securities Commissioner now enters the following Findings of Fact, Conclusions of Law, Judgment and Final Order.

I. FINDINGS OF FACT

1. NAWG is a business entity. NAWG has a last known business address of 100 N. Center Street, Ste 243, Mishawaka, Indiana, 46544.
2. NAWG and Bacon are wholesale dealers, or other entities defined by Indiana Code § 9-23-2-1, that hold license number 0900631.
3. Bacon is an individual and the owner of NAWG. Bacon has a last known residential address of 4375 Sunset Road # 213, Henderson, NV 89014.

4. On or about August 3, 2012, the Division filed a Petition for Order of Revocation against Respondents, NAWG and Bacon.

5. On August 3, 2012, the Commissioner issued an Order of Revocation, ordering NAWG and Bacon to file an answer to the Petition for Order of Revocation within fifteen (15) days following the date of their receipt of the service of the Order of Revocation.

6. On August 6, 2012, the Petition for Order of Revocation and the Order of Revocation were mailed via Certified Mail, Return Receipt Requested, to both Respondents at their last known addresses.

7. On August 9, 2012, the Petition for Order of Revocation and the Order of Revocation were signed for by W. Callahan at NAWG's and Bacon's last known business address. On August 8, 2012, the Petition for Order of Revocation and the Order of Revocation were signed for by M. Bacon at Bacon's last known residential address.

8. On or about July 5, 2012, a Division investigator, Kathleen Hults ("Hults"), called NAWG and Bacon via a phone number provided by Bacon to the Division, and she was able to speak with Vickie Bacon ("Vickie"). Hults informed Vickie that she needed to schedule an audit of NAWG's and Bacon's sales records at their established place of business. Pet. for Order of Revocation ¶ 8.

9. On or about July 6, 2012, Hults again contacted Vickie to attempt to schedule an audit of NAWG's and Bacon's sales records at their established place of business. *Id.* at ¶ 9.

10. On or about July 6, 2012, Hults was advised by Vickie that NAWG and Bacon would not be appearing for an audit at their principle place of business as they were in the process of closing out their dealership. *Id.* at ¶ 10.

11. During Hults' two attempts to schedule an audit with NAWG and Bacon she was advised that NAWG does not engage in the sale of motor vehicles, but rather allows individuals to become sales representatives of NAWG and gives them access to the dealer's only auto auctions. *Id.* at ¶ 11.

12. Hults discovered that NAWG, a wholesale dealer, and Bacon had conducted at least one (1) illegal retail sale of a motor vehicle to a member of the general public. *Id.* at ¶ 12.

13. NAWG's and Bacon's unpermitted retail sale involved a 2003 Pontiac Grand Am, Vehicle Identification Number ("VIN") ending in 4829, which was sold directly to a member of the general public, T. Cohen, through NAWG's agent Tyrone McCall ("McCall"), on or about March 12, 2012. *Id.* at ¶ 13.

14. Upon completion of the sale, McCall issued T. Cohen an interim plate, number C112433. The interim plate was run through a former retail dealer, Cars Plus Auto Sales, LLC, who went out of business in 2010. This interim plate was never and has never been issued legitimately by or from NAWG's and Bacon's dealership. *Id.* at ¶ 14.

15. NAWG and Bacon have failed to file an answer to the Petition for Order of Revocation or a motion for extension of time to answer the Petition for

Order of Revocation on or before fifteen (15) days after proper service was effected on NAWG and Bacon as required by the Order of Revocation.

II. CONCLUSIONS OF LAW

16. All Findings of Fact are incorporated by reference as Conclusions of Law, and all Conclusions of Law are incorporated as Findings of Fact.

17. The Auto Dealer Services Division (“Division”) is a division of the Office of the Secretary of State and has jurisdiction over persons engaging in the business of buying or selling motor vehicles, as provided by Indiana Code § 9-23-2 (“Act”).

18. Pursuant to Indiana Code § 9-23-0.7-1, the Secretary of State may delegate any or all of the rights, duties, or obligations of the Secretary of State under this article to: (1) the Securities Commissioner (“Commissioner”) appointed under Indiana Code § 23-19-6-1(a), or (2) another designee under the supervision and control of the Secretary of State.

19. The Act authorizes the Commissioner, among other things, to regulate the licensing of (1) an automobile auctioneer, (2) a converter manufacturer, (3) a dealer, (4) a distributor, (5) a distributor branch, (6) a distributor representative, (7) a factory branch, (8) a factory representative, (9) a manufacturer, (10) a transfer dealer, or (11) a wholesale dealer. *See* Indiana Code § 9-23-2-1.

20. This action was brought pursuant to the enforcement authority conferred by Indiana Code § 9-23-2-14, wherein the Commissioner has, *inter alia*, the authority to deny, suspend, or revoke a license issued under this chapter.

Prohibited Acts

21. Indiana Code § 9-23-2-14(c) states as follows:

Following an investigation under subsection (a), the secretary of state may, without hearing, issue orders and notices that the secretary of state determines to be in the public interest. The secretary of state may issue an order under this subsection denying, suspending, or revoking a license issued under this chapter for . . . [w]illful failure to comply with the provisions of this article or a rule adopted by the secretary of state under this article.

22. Additionally, 75 Indiana Administrative Code § 2-2-10(d)(4) states,

Each applicant must submit to an investigation by the [Division] within one hundred twenty (120) days following the issuance of the wholesale dealer license. Business records must be presented to verify the number of monthly sales. Each applicant will be contacted at the address given on the license application. If the applicant is not available when the investigator calls, it will be the responsibility of the dealer to contact the [Division] to arrange for a subsequent visit. Dealer plates will not be renewed under this section until an investigation has been conducted.

23. NAWG and Bacon are in violation of Indiana Code § 9-23-2-14(c)

and 75 Indiana Administrative Code § 2-2-10(d)(4) for willfully failing to produce evidence of sales for the statutorily-required audit of their sales records and for failing to contact the Division to reschedule that audit.

24. The Indiana Administrative Code states, “A wholesale dealer . . . may not sell vehicles to the general public.” 75 I.A.C. § 2-2-10.

25. NAWG and Bacon are in violation of 75 I.A.C. § 2-2-10 for conducting at least one (1) retail sale of the 2003 Pontiac Grand Am referenced herein, as a wholesale dealer, to a member of the general public.

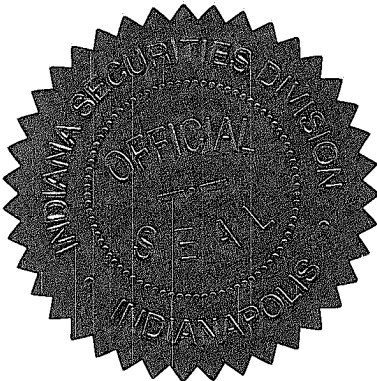
III. JUDGMENT AND FINAL ORDER

Upon Consideration of the foregoing Findings of Fact and Conclusions of Law, the Securities Commissioner now determines that NAWG and Bacon were properly served with the Petition for Order of Revocation. Nevertheless, the Respondents failed to file an answer to the Petition. Therefore, Respondents are deemed to be in default, and the allegations set forth in the Petition as to all Respondents are deemed to be true.

THE COMMISSIONER HEREBY ORDERS THAT:

- A. NAWG and Bacon shall immediately and PERMANENTLY CEASE AND DESIST from violating any provision of the Indiana Dealer Services Act;
- B. NAWG and Bacon are permanently barred from dealer services in Indiana and from engaging in any activity requiring registration or licensing with the Indiana Auto Dealer Services Division;
- C. NAWG and Bacon shall pay, jointly and severally, a civil penalty in the amount of Seven Thousand, Five Hundred Dollars (\$7,500.00); and
- D. NAWG and Bacon shall disgorge all monies received while operating as a dealer.

ORDERED at Indianapolis, Indiana this 22nd day of JANUARY, 2013.



CONNIE LAWSON
INDIANA SECRETARY OF STATE

CHRIS NAYLOR
INDIANA SECURITIES COMMISSIONER