

JAN 04 2013

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

**INDIANA
SECRETARY OF STATE**

IN THE MATTER OF:)
) Cause No. DLR 12-0242 RO
AUTO MAXX, LLC,)
)
Respondent.)

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

The Staff of the Office of the Indiana Secretary of State – Auto Dealer Services Division (“Division”), filed a Notice of Default in reference to Respondent Auto Maxx, LLC (“AM”) 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 October 2, 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. AM is a business entity. AM has a last known business address of 931 N. Main Street, Crown Point, In 46307.
2. AM is a dealer, or other entity defined by Indiana Code § 9-23-2-1, that holds license number 1000643.
3. Curtis Burrow (“Burrow”) is an individual and the owner of AM. Burrow has a last known residential address of 103 Corbin Court, Schererville, Indiana, 46375.

4. On or about October 2, 2012, the Division filed a Petition for Order of Revocation against AM.

5. On October 2, 2012, the Commissioner issued an Order of Revocation, ordering AM and Burrow 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 October 2, 2012, the Petition for Order of Revocation and the Order of Revocation were mailed via Certified Mail, Return Receipt Requested, to the Respondent at its last known business address, as well as Burrow's last known residential address.

7. On October 3, 2012, the Petition for Order of Revocation and the Order of Revocation were delivered to the last known residential address of Burrow.

8. In 2010, AM filed an "Application for Motor Vehicle Business License" ("dealer application") and was issued dealer license number 1000643 by the Division. Pet. for Order of Revocation ¶ 9.

9. On September 13, 2012, a Division investigator, Sherri Van Hook ("Van Hook"), attempted to conduct an audit of AM's sales records at the business location, 931 N. Main Street, Crown Point, Indiana, 56307. *Id.* at ¶ 10.

10. Upon arriving at AM's business location on September 13, 2012, Van Hook observed that AM had vacated the property and had ceased business operations at that location. *Id.* at ¶ 11.

11. Van Hook's visit to AM's business location on September 13, 2012 was prompted by the receipt of several consumer complaints. *Id.* at ¶ 12.

12. The first complaint filed with the Division against AM was received on August 9, 2012 from a T. Houser (“Houser”). In his complaint, Houser indicated he had purchased a 2000 Dodge Ram, Vehicle Identification Number (“VIN”) ending 142259, on June 4, 2012 from AM. AM did not give Houser title to the 2000 Dodge Ram at the time of sale. *Id.* at ¶ 13.

13. In his complaint, Houser stated he had received an interim plate, C936728, with an expiration date of July 1, 2012 from AM. When that interim plate expired, Houser contacted AM on July 5, 2012 and asked when he would receive title to his vehicle. An employee of AM indicated that the title was coming; at that time, AM issued Houser a second interim plate. The interim plate displayed the same number as the first interim plate issued to Houser, C936728, but now indicated an expiration date of August 6, 2012. The expiration date on the interim plate had been altered by AM. *Id.* at ¶ 14.

14. AM also failed to deliver title to the 2000 Dodge Ram to Houser within twenty-one (21) days of the date of sale. Van Hook sent AM a fine letter on August 9, 2012 for his title delivery violation, but AM failed to pay that fine. *Id.* at ¶ 15.

15. The second complaint filed with the Division against AM was received on September 6, 2012 from R. and L. Crawford (“the Crawfords”). In their complaint, the Crawfords indicated they had purchased a 2003 Buick, VIN ending 504419, on August 4, 2012 from AM. AM did not give the Crawfords title to the 2003 Buick at the time of sale and failed to do so within twenty-one (21) days of the date of sale, as required by statute. *Id.* at ¶ 16.

16. The third complaint filed with the Division against AM was received from a D. Keilman. In his complaint, Keilman indicated he had purchased a 1998 Chevrolet Blazer, VIN ending 100392, on August 7, 2012 from AM. AM did not give Keilman title to the 1998 Chevrolet Blazer at the time of sale. *Id.* at ¶ 17.

17. In his complaint, Keilman stated he had received an interim plate, D040627, with an expiration date of September 6, 2012 from AM. When that interim plate expired, Keilman received a second interim plate from AM via mail. The interim plate displayed the same number as the first interim plate issued to Houser, D040627, but now indicated an expiration date of September 25, 2012. The expiration date on the interim plate had been altered by AM. *Id.* at ¶ 18.

18. AM also failed to deliver title to the 1998 Chevrolet Blazer to Keilman within twenty-one (21) days of the date of sale. *Id.* at ¶ 19.

19. The fourth complaint filed with the Division against AM was received from a V. Vicari. In her complaint, Vicari indicated she had purchased a 2003 GMC, VIN ending 223595, on July 26, 2012 from AM. AM did not give Vicari title to the 2003 GMC at the time of sale. *Id.* at ¶ 20.

20. In her complaint, Vicari stated she had received an interim plate, D022158, with an expiration date of August 25, 2012 from AM. When that interim plate expired, Vicari received a second interim plate from AM via mail. The interim plate displayed the same number as the first interim plate issued to Vicari, D022158, but now

indicated an expiration date of September 25, 2012. The expiration date on the interim plate had been altered by AM. *Id.* at ¶ 21.

21. AM also failed to deliver title to the 2003 GMC to Vicari within twenty-one (21) days of the date of sale. *Id.* at ¶ 22.

22. The fifth complaint filed with the Division against AM was received from a J. Elman. In his complaint, Elam indicated he had purchased a 2002 Dodge, VIN ending 136572, on July 20, 2012 from AM. AM did not give Elam title to the 2002 Dodge at the time of sale. *Id.* at ¶ 23.

23. In his complaint, Elam stated she had received an interim plate, D010335, with an expiration date of August 18, 2012 from AM. When that interim plate expired, Elam received a second interim plate from AM via mail. The interim plate displayed the same number as the first interim plate issued to Elam, D010355, but now indicated an expiration date of September 10, 2012. The expiration date on the interim plate had been altered by AM. *Id.* at ¶ 24.

24. AM also failed to deliver title to the 2002 Dodge to Elam within twenty-one (21) days of the date of sale. *Id.* at ¶ 25.

II. CONCLUSIONS OF LAW

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

26. 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”).

27. 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.

28. 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.

29. 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

30. Indiana Code § 9-23-2-11(1) states, “A person who ceases a business activity for which a license was issued under this chapter shall do the following:
Notify the secretary of state of the date that the business activity will cease.”

31. AM failed to notify the secretary of state that AM was going to cease business operations.

32. AM are in violation of Indiana Code § 9-23-2-11(1) for

failing to notify the secretary of state of the date their business activity ceased.

33. Indiana Code § 9-23-2-14(c)(1) states that “[t]he secretary of state may issue an order ... denying, suspending, or revoking a license issued under this chapter for any ... [m]aterial misrepresentation in the application for the license or other information filed with the secretary of state.”

34. Indiana Code § 9-23-2-2(a)(3)(B) states, “[A]n application for a license...must: [c]ontain the information the secretary of state considers necessary to enable the secretary of state to determine fully the following information: The location of each of the applicant's places of business in Indiana.”

35. AM provided the following address in its license application: 931 N. Main Street, Crown Point, Indiana, 56307.

36. Because AM is no longer located at the address listed in its license application, AM’s license application contains a material misrepresentation in violation of Indiana Code § 9-23-2-14(c)(1).

37. Indiana Code § 9-23-2-14(c)(3) states that “[t]he secretary of state may issue an order ... denying, suspending, or revoking a license issued under this chapter for any ... [w]illful failure to comply with the provisions of this article or a rule adopted by the secretary of state under this article.”

38. AM is in violation of Indiana Code § 9-23-2-14(c)(3) for failure to inform the Division of AM’s cessation of business activity and vacation of the business premises.

39. Indiana Code § 9-23-2-11(2) states, “A person who ceases a business activity for which a license was issued under this chapter shall do the following:

Deliver all permanent dealer license plates and interim license plates issued to the person to the bureau within ten (10) days of the date the business activity will cease.”

40. AM failed to deliver all permanent dealer license plates and interim plates to the Division.

41. AM is in violation of Indiana Code § 9-23-2-11(2) for failing to deliver to the Division, within ten (10) days of the date business activity ceased, all permanent dealer license plates and interim license that were issued.

42. Indiana Code § 9-17-3-3(a) states, in pertinent part, as follows:

If a vehicle for which a certificate of title has been issued is sold or if the ownership of the vehicle is transferred in any manner other than by a transfer on death conveyance under section 9 of this chapter, the person who holds the certificate of title must . . . (2) . . . deliver the certificate of title to the purchaser or transferee *at the time of the sale or delivery* to the purchaser or transferee of the vehicle, if the purchaser or transferee has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens. . . . (5) [d]eliver the certificate of title to the purchaser or transferee within twenty-one (21) days after the date of sale or transfer to the purchaser or transferee of the vehicle, if all of the following conditions exist:

(A) The seller or transferor is a vehicle dealer licensed by the state under IC 9-23.

(B) *The vehicle dealer is not able to deliver the certificate of title at the time of sale or transfer.*

(C) The vehicle dealer reasonably believes that it will be able to deliver the certificate of title, without a lien or an encumbrance on the certificate of title, within the twenty-one (21) day period.

(D) *The vehicle dealer provides the purchaser or transferee with an affidavit under section 3.1 of this chapter.*

(E) The purchaser or transferee has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

(emphasis added).

43. Additionally, Indiana Code § 9-23-2-14(c) states,

[T]he 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 . . .

(2) Lack of fitness under the standards set forth in this article or a rule adopted by the secretary of state under this article.

(3) Willful failure to comply with the provisions of this article or a rule adopted by the secretary of state under this article.

(4) Willful violation of a federal or state law relating to the sale, distribution, financing, or insuring of motor vehicles.

44. AM is in violation of Indiana Code § 9-17-3-3(a) for failing to properly deliver the titles to at least five (5) vehicles to each respective purchaser.

45. AM is in violation of Indiana Code § 9-23-2-14(c)(2) for demonstrating a lack of fitness in conducting business transactions with consumers. In at least five (5) instances, AM failed to deliver vehicle titles to their respective purchasers.

46. AM is in violation of Indiana Code § 9-23-2-14(c)(4) for willfully violating state law by failing to deliver titles to at least twenty-two (22) vehicles to each respective purchaser.

47. Indiana Code § 35-43-5-3 states as follows:

A person who . . . misapplies entrusted property, *property of a governmental entity*, or property of a credit institution in a manner that the person knows is unlawful or that the person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted . . . commits deception, a Class A misdemeanor.

(emphasis added).

48. Additionally, Indiana Code § 9-23-2-14(c) states,

[T]he 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 violation of a federal or state law

relating to the sale, distribution, financing, or insuring of motor vehicles.

AM has violated Indiana Code § 9-23-2-14(c) by willfully and voluntarily violating Indiana Code § 35-43-5-3. AM altered the expiration dates listed on interim plates issued to it by the Division in at least four (4) instances.

49. 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.

50. Additionally, 75 Indiana Administrative Code § 2-2-13(a)(2) states, “Only one (1) interim plate may be issued by a dealer to the purchaser of a motor vehicle. No additional interim plates may be issued for the motor vehicle for any reason.”

51. AM is in violation of Indiana Code § 9-23-2-14 and 75 Indiana Administrative Code § 2-2-13(a)(2) for willfully failing to comply with a rule or article adopted by the Division by issuing more than one (1) interim plate to at least four (4) purchasers, all of whom are referenced herein.

III. JUDGMENT AND FINAL ORDER

Upon Consideration of the foregoing Findings of Fact and Conclusions of Law, the Securities Commissioner now determines that AM was properly served with the Petition for Order of Revocation. Nevertheless, the Respondent failed to file an answer

to the Petition. Therefore, Respondent is 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. AM shall immediately and PERMANENTLY CEASE AND DESIST from violating any provision of the Indiana Dealer Services Act;
- B. AM is 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. AM shall pay a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000.00); and
- D. AM shall disgorge all monies received while operating as a dealer.

ORDERED at Indianapolis, Indiana this 4TH day of JANUARY, 2013.



CONNIE LAWSON
INDIANA SECRETARY OF STATE

CHRIS NAYLOR
INDIANA SECURITIES COMMISSIONER