



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Denial of the Department of
Transportation of a Salesperson Application of
Simon Bartus

Case No.: TR-07-0025

FINAL DECISION

By letter filed on June 11, 2007, Simon "Sam" Bartus requested a hearing pursuant to Wis. Stat. § 218.0116(1) to review the Department of Transportation's decision to deny his application for a motor vehicle salesperson license. Pursuant to due notice, a hearing was conducted on July 23, 2007, in Wausau, Wisconsin. Mark J. Kaiser, administrative law judge, presided. The parties filed post-hearing briefs. The last submission was received on September 10, 2007.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES are certified as follows:

Simon "Sam" Bartus
707 Jefferson Street
Wausau, WI 54403

Wisconsin Department of Transportation, by

Attorney Charles M. Kernats
DOT - Office of General Counsel
P. O. Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision on October 15, 2007. The Department of Transportation (Department) filed a letter in support of the Proposed Decision on October 23, 2007. The petitioner filed objections to the Proposed Decision on November 29, 2007. Mr. Bartus presented two arguments in his "objections." Both arguments related to a finding in a previous decision issued by the Division of Hearings and Appeals (Division) revoking Mr. Bartus' motor vehicle dealer license. In that decision, the Division found that Mr. Bartus had illegally repossessed a motor vehicle that he had sold to a retail customer. Mr. Bartus appealed the decision revoking his motor vehicle dealer license to the Marathon County circuit court. The circuit court affirmed the Division's decision.

One of the bases for the Department's denial of Mr. Bartus' application for a motor vehicle salesperson license was that his motor vehicle dealer license had been revoked. At the prehearing conference conducted in the instant matter, Mr. Bartus stipulated that the grounds for the denial of his salesperson license were true. The only issue for hearing was whether these grounds constituted a reasonable basis for the denial of application for a salesperson license. Despite this stipulation, at the hearing and in his objections to the Proposed Decision, Mr. Bartus continues to challenge the findings made in the decision revoking his motor vehicle dealer license, particularly the finding that Mr. Bartus had illegally repossessed a motor vehicle that he had sold to a retail customer.

Mr. Bartus has been advised numerous times that he can not collaterally attack the findings in the decision revoking his motor vehicle dealer license in this matter because of the doctrine of issue preclusion. Mr. Bartus attached numerous other documents to his objections to the Proposed Decision. In his objections, Mr. Bartus does not explain the relevance of these documents; however, none of the documents appear to relate to the issue of whether the grounds stated by the Department for the denial of Mr. Bartus' application for a motor vehicle salesperson license constitute a reasonable basis for that denial.¹ Having reviewed the submissions of the parties and the record in this matter, other than correcting typographical errors and making minor editorial modifications, I hereby adopt the Proposed Decision of the administrative law judge as the Final Decision in this matter.

FINDINGS OF FACT

The Administrator finds:

1. In March of 2007, Simon "Sam" Bartus applied to the Wisconsin Department of Transportation (Department) for a motor vehicle salesperson license (exhibit 1). Mr. Bartus is seeking a license to work as a salesperson for Wild Life Auto in Vesper, Wisconsin. The owner of Wild Life Auto is William Porter. By letter dated May 11, 2007, the Department denied Mr. Bartus' application for a salesperson license (exhibit 2). The Department cited two grounds for the denial. The grounds were:

Mr. Bartus' license to operate as a motor vehicle dealer was suspended as the result of special orders issued by the Division of Hearings and Appeals and was revoked by an order issued by the Division of Hearings and Appeals.

After his motor dealer license had been revoked, Mr. Bartus was convicted of 74 counts of failing to transfer motor vehicle titles, in violation of Wis. Stat. section 342.15(2).

¹ The only document that is arguably relevant to the issue in this matter is a document comparing the punishment imposed on Heiser Lincoln-Mercury, Inc., with that imposed on Mr. Bartus. This document was admitted as an exhibit at the hearing and its evidentiary value was adequately addressed in the Proposed Decision.

2. Mr. Bartus operated a used motor vehicle dealership (Sam's Auto Sales) from October of 1998 until July of 2005. Mr. Bartus operating as Sam's Auto Sales has been the subject of three special orders issued by the Division of Hearings and Appeals (Division). On October 20, 1998, the Division issued Special Order No. 98-H-1096. On March 29, 2001, the Division issued Special Order No. TR-00-0046. In Special Order No. TR-00-0046, the Division suspended Mr. Bartus' motor vehicle dealer license for a period of six months. On February 20, 2003, the Division issued Special Order No. TR-02-0047. In Special Order No. TR-02-0047 the Division suspended the Mr. Bartus' motor vehicle dealer license for five days. All three special orders were issued pursuant to stipulations entered into by Mr. Bartus and the Department.

3. On January 21, 2004, the Department filed a complaint with the Division alleging that Sam's Auto Sales failed to comply with the terms and conditions of the stipulations and special orders and violated various state statutes. The Division held an evidentiary hearing on June 3, 2004 and on November 24, 2004, issued a final decision revoking Mr. Bartus' motor vehicle dealer license (exhibit 3).

4. The Division's decision revoking Mr. Bartus' motor vehicle dealer license also found that Mr. Bartus had illegally repossessed a motor vehicle that he had sold to a retail customer. The administrator of the Division concluded that Mr. Bartus' failure to comply with the conditions of the special orders and the unlawful repossession of a motor vehicle constituted a reasonable basis to revoke Mr. Bartus' motor vehicle dealer license.

5. Mr. Bartus appealed the Division's decision revoking his motor vehicle dealer license to Marathon County circuit court. In an order dated July 11, 2005, the Marathon County circuit court affirmed the Division's decision revoking Mr. Bartus' motor vehicle dealer license (exhibit 4). Mr. Bartus did not pursue any further appeals.

6. After Mr. Bartus' motor vehicle dealer license was revoked, he had a number of unsold vehicles remaining on his lot. The Department allows motor vehicle dealers thirty days after a license is revoked to transfer the titles of unsold vehicles into the dealer's name or into the name of another motor vehicle dealer. In April of 2006, the Department discovered that there were 74 vehicles remaining on the lot of Sam's Auto Sales and that these vehicles were still titled in the names of the previous owners of those vehicles. Mr. Bartus was issued 74 citations for failure to transfer/apply for a new title.

7. In May of 2006, Mr. Bartus transferred the titles of the unsold vehicles to Wild Life Auto. Although Mr. Bartus transferred the titles to the vehicles, the citations were not dismissed. On August 22, 2006, Mr. Bartus was convicted of 74 counts of failure to transfer/apply for a new title in violation of Wis. Stat. § 342.15(2) (exhibits 5 and 7). At the hearing in the instant matter, Mr. Bartus testified that he has submitted a motion to reopen or vacate these convictions (exhibit 8). But as of the date of the hearing, the convictions still existed and there is no evidence that the convictions have been reconsidered or vacated by the court.

8. Catherine Fallos, a Department investigator, testified that the Department allows motor vehicle dealers to leave the titles of motor vehicles in the name of the previous owner of the vehicle until the dealer sells the vehicle. This policy enables motor vehicle dealers to avoid

the expense and paperwork of transferring titles to motor vehicles they sell twice, once into the name of the dealership and a second time into the name of the retail purchaser. However, after his dealer's license had been revoked, Mr. Bartus was required to transfer the titles of remaining vehicles into his own name or to transfer them to another motor vehicle dealer within thirty days of the date of the revocation. Ms. Fallos explained that if a motor vehicle is left in the name of a previous owner that previous owner has potential liability if the vehicle is involved in an accident or is used in the commission of a crime.

9. When Mr. Bartus operated a motor vehicle dealership he was the recipient of several special orders and he unlawfully repossessed a motor vehicle. This fact along with the fact that after his motor vehicle dealer license was revoked he failed to timely transfer the titles of the remaining, unsold vehicles in the dealership's inventory out of the names of the previous owners constitutes a reasonable basis for the denial of Mr. Bartus' application for a motor vehicle salesperson license.

DISCUSSION

The Department of Transportation set forth the grounds for the denial of Mr. Bartus' application for a motor vehicle salesperson license in a letter dated May 11, 2007. At a prehearing conference conducted in this matter, Mr. Bartus indicated that he did not dispute that the grounds set forth in the denial letter are true. Accordingly, the only issue identified in the notice of hearing issued in this matter is whether the grounds set forth in the denial letter constitute a reasonable basis for the denial of Mr. Bartus' application for a salesperson license.

The grounds for the denial of Mr. Bartus' application for a motor vehicle salesperson license are both related to his actions as a motor vehicle dealer. The question is whether there is a sufficient connection between Mr. Bartus' actions as a motor vehicle dealer and his duties as a motor vehicle salesperson for Wild Life Auto. The activities of a motor vehicle dealer and a motor vehicle salesperson are similar in that in both roles Mr. Bartus will have direct contact with retail customers. The distinction between these two roles is that as a salesperson Mr. Bartus will be supervised by William Porter.

The primary purpose of licensing motor vehicle salespersons and dealers is to protect the general public. Mr. Porter testified that with respect to any sales that Mr. Bartus would be involved in as a salesperson for Wild Life Auto, he would complete all required forms to ensure that they are completed in accordance with Department rules and regulations. Although Mr. Porter's supervision of Mr. Bartus may provide some protection to motor vehicle purchasers, the violations committed by Mr. Bartus when he was operating Sam's Auto Sales display a lack of respect for the laws regulating motor vehicle dealers. Mr. Bartus has shown no appreciation of the potential harm to which the violations he committed as a motor vehicle dealer exposed his customers.

Although Mr. Bartus stipulated that the grounds cited by the Department for the denial of his application for a salesperson license are true, at the hearing and in his post-hearing brief, Mr. Bartus continued to argue that the revocation of his motor vehicle dealer's license was unfair.

The closest Mr. Bartus came to providing any evidence that the denial of his application for a motor vehicle salesperson license was unreasonable was citing a special order issued against Heiser Lincoln-Mercury, Inc., (TR-01-0002). Heiser Lincoln-Mercury, Inc., (Heiser) admitted to the selling of 146 vehicles by unlicensed salespeople and the failure to retain copies of titles and odometer disclosure statements in its files for 127 vehicles. As punishment for these violations, the sales licenses of two sales managers for Heiser were suspended for a total of twelve days and Heiser was enjoined from allowing unlicensed salespeople to sell motor vehicles to retail customers and failing to retain copies of titles and mileage disclosure statements in the future. Mr. Bartus argued that the punishment he received was excessive compared to that imposed on Heiser.

There is insufficient information in the special order issued to Heiser to compare the violations committed by Heiser and Mr. Bartus. However, there is no indication that any potential for consumer harm was created as the result of the violations committed by Heiser. On the other hand, Mr. Bartus caused the unlawful repossession of a motor vehicle. A retail customer of Mr. Bartus lost the motor vehicle he had purchased without the protections afforded to him by the Wisconsin Consumer Act. Additionally, Mr. Bartus' failure to transfer titles of the vehicles that remained on his lot after his motor vehicle dealer license had been revoked exposed those owners in whose names the vehicles remained to significant liability. At a minimum, leaving those vehicles titled in the names of the previous owners exhibited a cavalier attitude to the interests of those individuals and a lack of appreciation of the duties and responsibilities of a motor vehicle dealer. For these reasons the Department's denial of Mr. Bartus' application for a motor vehicle salesperson license is reasonable and should be affirmed.

CONCLUSIONS OF LAW

The Administrator concludes:

1. Simon "Sam" Bartus' conviction of 74 counts of failure to transfer/apply for a new title in violation of Wis. Stat. § 342.15(2) constitute a violation of Wis. Stat. § 218.0116(1)(gm). The violation of Wis. Stat. § 218.0116(1)(gm) constitute a reasonable basis to deny the application of Simon "Sam" Bartus for a motor vehicle salesperson license pursuant to Wis. Stat. § 218.0116(2).
2. The grounds for the revocation of the motor vehicle dealer license issued to Simon "Sam" Bartus demonstrate that he is unfit to hold a motor vehicle salesperson license and pursuant to Wis. Stat. § 218.116(1)(a) constitutes a reasonable basis for the denial of his application for a motor vehicle salesperson license.
3. Pursuant to Wis. Stat. §§ 218.0116(2) and 227.43(1)(bg), Stat., the Division of Hearings and Appeals has the authority to issue the following order.

ORDER

The Administrator orders:

The denial by the Wisconsin Department of Transportation of the Simon "Sam" Bartus' application for a motor vehicle salesperson license is affirmed.

Dated at Madison, Wisconsin on December 10, 2007.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
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By: _____
David H. Schwarz, Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.