

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HIGHWAY SAFETY AND)	
MOTOR VEHICLES, DIVISION OF FLORIDA)	
HIGHWAY PATROL,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 90-0072
)	
JARKOW'S WRECKER SERVICE,)	
)	
Respondent.)	
<hr/>		

RECOMMENDED ORDER

The final hearing in the above-styled matter was heard pursuant to notice by P. Michael Ruff, assigned Hearing Officer of the Division of Administrative Hearings, on March 30, 1990, in Panama City, Florida.

APPEARANCES

For Petitioner: R. W. Evans, Esquire
I. Ed Pantaleon, Esquire
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Suite A-432
Tallahassee, Florida 32399-0500

For Respondent: Brian D. Hess, Esquire
9108 West Highway 98
Panama City Beach, Florida 32408

STATEMENT OF THE ISSUES

The issues in this cause concern whether the Respondent should be removed from the Petitioner's wrecker service "rotation list" for alleged violations of Rule 15B-9.007(7), enacted in implementation of Section 321.051, Florida Statutes.

PRELIMINARY STATEMENT

This cause arose from the filing of an Administrative Complaint by the Department of Highway Safety and Motor Vehicles, Division of Florida Highway Patrol, wherein it is alleged, in essence, that the Respondent has demonstrated "lack of reputability" by allowing vehicles entrusted to his custody and control at his place of business, brought there pursuant to his operations as a wrecker service, to have various parts unlawfully removed from them and without the owner's permission. It is alleged that the Respondent has been unable to explain why such parts were removed or who removed them and unable to provide any assurance to the Petitioner that such occurrences will not happen in the future. The Petitioner thus alleges that as a result of the incidents involving

two vehicles from which parts were unlawfully removed while in the Respondents custody, the Respondent can no longer be trusted to adequately protect vehicles entrusted to him for towing and storage by the Petitioner in its implementation of its wrecker service rotation dispatching system which it uses to remove wrecked or abandoned vehicles over which it exerts dominion in the course of its law enforcement duties.

The cause came on for hearing as noticed. At the hearing, the Petitioner presented 16 exhibits. Exhibits 1 and 2 were admitted, exhibit 3 was admitted on a limited basis pursuant to Section 120.58, Florida Statutes. Exhibits 4, 5 and 6 were admitted; exhibits 7, 8 and 9 were admitted; exhibit 10 was admitted on a limited basis pursuant to Section 120.58, Florida Statutes. Exhibit 11 was admitted; exhibit 13(A&B) was admitted on a limited basis pursuant to Section 120.58, Florida Statutes, and exhibits 15 and 16 were admitted. The Petitioner adduced the testimony of Jerry Davis, Russell Hudson, Charles W. Helms, Greg Johnson, Russ Breeland, Donald Lizotte, Vernon W. Welch, Mitchell Pitts, Leo G. Shealy, Jr., Ronald LaMaster and Jimmy C. Wright. The Respondent cross-examined Petitioner's witnesses but produced no witnesses or exhibits.

The parties elected to have the proceedings transcribed and requested an extended briefing schedule. Subsequent to the hearing and upon expiration of the original briefing schedule, upon Respondent's motion, an extension of time was granted for submission of proposed recommended orders. The proposed findings of fact contained in the proposed recommended orders have been addressed in this Recommended Order and specifically ruled upon in the Appendix attached hereto and incorporated by reference herein.

FINDINGS OF FACT

1. The Petitioner is an agency of the State of Florida, which, through its Division of Florida Highway Patrol, maintains a "zone rotation wrecker system" for the State of Florida. The "rotation list" is used to determine which wrecker service is called to remove wrecked, abandoned or stolen vehicles from public thoroughfares in connection with investigations or operations of the Florida Highway Patrol. The rotation list is made up of names of wrecker operators who have been placed on that list following an investigation into their background and inspection of equipment they employ in order to insure compliance with the Petitioner's rules, particularly related to the safe operation of the wrecker service equipment and the safe and appropriate handling of towed and stored vehicles. When a wrecker is called to respond to an accident or to the need for a motorist to have a vehicle towed, the Florida Highway Patrol calls the wrecker service at the top of the list to obtain wrecker services. This wrecker service is then rotated to the bottom of the rotation list in the context of which wrecker service will be called for succeeding wrecker service needs. The admission and retention of reputable wrecker service operators on the rotation list who can be trusted to care for the public's vehicles in an appropriate manner, both as to towing and storage, are primary concerns of the Petitioner.

2. Respondent, Jarkow's Wrecker Service ("Jarkow") participates in the Florida Highway Patrol rotation wrecker system in Bay County, Florida. The Respondent's business establishment is located at 5715 Titus Road, Panama City, Florida. Stuart Jarkow and his wife live on the premises of the business. The Respondent had been on the Florida Highway Patrol rotation wrecker service list for approximately three years as of the time of hearing.

3. On January 9, 1989, Trooper Vernon D. Welch, Florida Highway Patrol, investigated an accident on State Road 2301 in Bay County. The accident involved a 1986 Toyota pickup truck owned by Jerry Davis, who was driving it at the time. The accident occurred at approximately 2:15 a.m., when Mr. Davis swerved to avoid a dog. The truck rolled over and came to rest on its top. Mr. Davis was uninjured, but the vehicle was not in a condition to be driven under its own power and required towing.

4. Pursuant to a call by Trooper Welch from the rotation list, the Respondent and his wrecker responded to the scene of the accident. He towed the Davis truck to his storage lot in Bay County at his place of business where it remained until January 16, 1989. During the time it rested at Mr. Jarkow's storage lot and place of business, Mr. Davis, the owner, did not go to inspect the truck because he believed that Mr. Jarkow would charge him a \$25.00 fee for such inspection.

5. Mr. Davis had purchased the truck in 1988 and replaced two of the tires at the time of purchase. Later, on August 5, 1988, he bought two other tires. At the time of the accident, the truck was equipped with four 14-inch steel-belted radials and a Sears Diehard battery, which Mr. Davis had purchased three months after buying the truck. At the time of the accident, the tires and rims were all in very good condition. Mr. Davis also kept a spare 14-inch wheel in the bed of the truck. After the vehicle rolled over during the accident, the wheel was retrieved and returned to the vehicle and was in the vehicle when Mr. Jarkow towed it to his place of business. All four tires were inflated when the vehicle was towed to Jarkow's lot.

6. Garry's Auto Salvage ("Garry's") is a firm which deals primarily in late-model vehicles for salvage. Pursuant to contracts with insurance companies, Garry's transports and stores damaged vehicles at its place of business, pending appraisal of the value of the vehicle or the damage cost by the insurance company responsible for the risk of an accident. At such time as insurance companies make financial settlements with the owners of the vehicles, Garry's typically purchases the damaged vehicle in order to sell the parts which can be salvaged. Pursuant to a contract with Superior Insurance Company, Garry's acquired Mr. Davis' truck on January 16, 1989. The vehicle was to remain at Garry's until the insurance company made final settlement with the owner. Greg Johnson, a car hauler for Garry's, was asked to pick up the 1986 Toyota truck from Jarkow's place of business. Upon arrival at Jarkow's, Mr. Johnson presented a "pickup order" to Stuart Jarkow, the Respondent. Mr. Jarkow did not immediately release the vehicle; but after approximately 30 minutes, during which undisclosed negotiations apparently occurred, Mr. Jarkow agreed to release it to Mr. Johnson.

7. Mr. Johnson completed an inventory report describing the condition of the vehicle. He described the rims as "good" because they were not bent or otherwise damaged. Due to the poor condition of the tire tread which he observed on the tires, he described them as being in poor condition. Mr. Jarkow refused to sign the inventory report initially but later signed it after writing "no" in spaces reserved for "spare (tire) spoilers, and shades." He also wrote "tire only in bed" on the inventory form.

8. Mr. Johnson paid Jarkow for the towing and storage charges, put the Toyota truck onto his transporter truck and went straight to Garry's. He unloaded the truck at Garry's in an area in the storage lot designated for cars on which insurance settlements had not yet been completed. Mr. Johnson did not

remove anything from the vehicle after he had picked it up from Jarkow. The Toyota was in the same condition when it arrived at Garry's as it was when Mr. Johnson picked it up from Jarkow.

9. Russ Breeland, Manager of Garry's, met Mr. Johnson when the Toyota was brought in to that place of business. Mr. Breeland looked at the vehicle to make sure that nothing was missing. He immediately noticed that the tires and wheels were not original. He observed only one Toyota wheel on the vehicle. The right-side tires were deflated, and the tires had very poor tread condition. The battery did not match as being original to the vehicle. In particular, due to the battery's weathered condition, it appeared to have been sitting out in the weather for a substantial period of time and later installed in the wrecked truck. The original battery posts were in a weathered state indicating that they had not been recently connected to any battery terminals.

10. A short time after the vehicle was brought to Garry's, the owner, Jerry Davis, arrived there to inspect the truck. He met with Donald Lizotte, an employee of Garry's. Mr. Lizotte and Mr. Davis inspected the vehicle, and Mr. Davis became upset when he discovered that the wheels and the battery appeared to have been replaced with unrelated, inferior parts. Mr. Lizotte wrote down the serial numbers and makes of the tires on the back of the inventory report, a description of the rims, and the make of the battery. The tires on the truck were a mix of recapped radial tires and bias-ply tires. Such a mix of radial and non-radial tires is very atypical and not normally done because a match of such tires on a vehicle can cause the vehicle to sway and to track with the ruts of a road, creating erratic steering and a road hazard.

11. The Sears Diehard battery, which had been purchased by Mr. Davis and installed in his truck before the accident, was not in the truck. The battery found in the truck was a Delco battery. The 14-inch wheel, which had been kept in the bed of the truck by Mr. Davis, was missing. Rather, a 15-inch spare tire was found in the truck, without a wheel.

12. Upon leaving Garry's, Mr. Davis called the Florida Highway Patrol on January 16, 1989. He made a verbal complaint to Lt. Charles Helms against the Respondent. Mr. Davis had seen photographs of the truck taken by Mr. Lizotte when the truck arrived at Garry's and concluded that Jarkow had swapped the parts or that someone, while it was in Jarkow's custody, had swapped the parts on the vehicle. Lt. Helms informed Mr. Davis that he should file a written complaint with the Florida Highway Patrol.

13. On January 26, 1989, Lt. Helms, accompanied by Trooper Welch, went to Garry's to look at the truck. He obtained Mr. Lizotte's photographs and took additional photographs of the vehicle. Trooper Welch observed from the appearance of the lug nuts and the rims that the wheel rims had recently been changed. Mr. Davis delayed filing a written complaint with the Florida Highway Patrol until April 4, 1989. Lt. Helms initiated a criminal investigation to determine if the truck parts had been stolen and submitted the results to the State Attorney's office on July 18, 1989. Lt. Helms later learned that no criminal charges would be filed by the State Attorney's office. He pursued an administrative investigation against the Respondent, in any event.

14. During his investigation, Lt. Helms was advised by Mr. Breeland of a prior incident involving the removal of wheels and tires from a vehicle which had been towed by and stored at Jarkow. Lt. Helms investigated that incident which involved the replacement of wheels and tires from a 1986 Mustang owned by Leo Shealy. That incident occurred in July of 1988.

15. The Mustang was owned by Mr. Shealy but driven by his son. The vehicle was involved in an accident on July 20, 1988 in Panama City. The accident was investigated by Officer Mitchell Pitts of the Panama City Police Department. The Mustang was equipped with expensive aluminum wheels and radial tires at the time of the accident. Mr. Shealy's son had spent approximately \$1,000.00 on the new wheels and tires one week prior to the accident. The Respondent was called to tow the Mustang to his place of business. Prior to removal of the vehicle from the accident scene, Officer Pitts observed that the wheels and tires were in good condition and that the rims were a "mag type" wheel and, in other words, were the wheels purchased by Mr. Shealy's son and installed on the vehicle prior to the accident.

16. Mr. Shealy's son was driving the mustang when the accident occurred and was taken to the hospital. Following his release from the hospital, Mr. Shealy and his son went to Jarkow to check on the condition of the vehicle and retrieve some of their personal effects from the interior of the vehicle. On that visit, the tires and rims were unchanged. Mr. Shealy inquired about the stereo equipment in the vehicle, and Mr. Jarkow told him that the vehicle would be kept locked up where no one could tamper with it. He assured Mr. Shealy that there would be no problem about anything being removed from the vehicle.

17. Mr. Shealy received a call from an insurance adjuster, Ronald LaMaster, several days later. Mr. LaMaster requested that he sign a release form at Jarkow so that the Mustang could be picked up by Garry's and taken to Garry's for adjustment and settlement. Mr. Shealy met with Mrs. Jarkow at 8:00 a.m. on that Saturday morning and signed a release form. While he was at Jarkow, Mr. Shealy told Mrs. Jarkow that he hoped that the vehicle could be "totaled", that is, that the full appraisal value would be paid for the vehicle, instead of repairing the damage, because he did not want to endure a lengthy period of time while repairs were being effected. Mrs. Jarkow replied that if Mr. Shealy desired it, the vehicle could be totaled, that is, that Jarkow could take steps to insure that the vehicle in its damaged condition would not have sufficient value over the cost of the necessary repairs, so that the insurance company would declare it a total loss and pay the appraised value for the vehicle to Mr. Shealy. Mr. Shealy assumed, from her comments, that Mrs. Jarkow was assuring him that the Respondent could render the appearance of the Mustang such that it would be appraised as not worthy of repair.

18. Following his conversation with Mrs. Jarkow, Mr. Shealy did not feel secure about the arrangements made about his vehicle. He drove back to Jarkow at 11:00 a.m. that same morning. He did not immediately recognize the Mustang at the storage lot at Jarkow, although it was sitting in the same place as he last saw it. The wheels and tires had already been replaced since he had spoken with Mrs. Jarkow that morning with inferior black-painted wheels and old rotten tires. Mr. Shealy then called Mr. LaMaster and told him to advise Garry's not to pick up the Mustang as arranged. Mr. Shealy later called Jarkow. A dispatch service answered the telephone, and Mr. and Mrs. Jarkow did not respond to the telephone call. Mr. Shealy told that dispatch service to have Mr. Jarkow return his call. When his call was not returned, Mr. Shealy called again some time later that same day and spoke with the dispatch service once again. Mr. Shealy was told then that Mr. Jarkow intended to call him but that he must have been busy. Mr. Shealy then told the dispatch service to relay a message to Mr. Jarkow to the effect that he could either put the original equipment back on the Mustang or answer for failure to do so to the Bay County Sheriff's Department. Mr. Shealy told the dispatch service that he would return at 2:00 p.m. to inspect the vehicle.

19. Mr. Shealy returned to Jarkow at 2:00 p.m. that same day. He knocked on the door and no one responded. He observed the vehicle, however, and saw that his son's wheels and tires had been installed on the vehicle once again. He took photographs of it and then called Mr. LaMaster requesting that the Mustang be taken from Jarkow as soon as possible. Mr. Shealy never made a report to the sheriff's department, however. He merely stated that he, in effect, did not wish to encounter any further problems in dealing with-the vehicle and the accident.

20. Based upon these incidents with the Toyota truck and the Mustang, Lt. Helms concluded, in his opinion, that the Respondent had engaged in a pattern of conduct demonstrating a lack of reputability as a wrecker service.

21. Lt. Helms presented his findings to Major Jimmy C. Wright, the Troop Commander. Major Wright reviewed the investigation and recommended removal of the Respondent from the rotation list because equipment had been removed from the vehicles while they were in the Respondent's custody. Major Wright concluded in recommending this agency initial action that the incidents involving the two vehicles, in his opinion, demonstrated a lack of reputability within the meaning of Rule 15B-9.007(7), Florida Administrative Code. He felt that the Florida Highway Patrol could no longer rely on the Respondent to perform a caretaking function in an appropriate manner with vehicles entrusted to its custody for towing and storage.

22. Major Wright interpreted Rule 15B-9.007(7), Florida Administrative Code, to mean that the Respondent was responsible for acts of third persons under his control or for their acts with regard to vehicles which were under his control. He concluded that the rule at issue concerned the responsibilities of the wrecker service business and did not merely relate to a singular individual who owned or operated the business regardless of what sort of business entity under which it operates. Thus, Major Wright concluded, under the above-cited rule as he construed it, that Jarkow was responsible for the acts occurring at his business location. Accordingly, based upon his 30 years' experience with the Florida Highway Patrol and working with the standard wrecker rotation system set up by the statute and rule cited herein, both as a trooper and in a supervisory capacity, and in consideration of his interpretation of Rule 15B-9.007(7), Florida Administrative Code, to which he testified, Major Wright recommended that the Respondent be removed from the wrecker service rotation list for a lack of reputability, pursuant to Rule 15B-9.007(7), Florida Administrative Code.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. Section 120.57(1), Florida Statutes (1989).

24. Section 321.051, Florida Statutes (1989), sets forth the petitioner/agency's authority to establish a wrecker operator rotation system. That statute, when read in pari materia with Section 321.14, Florida Statutes (1989), which last section requires that the provisions of that chapter be liberally construed in the interest of promoting public safety, is the authority for the wrecker rotation system and the rules adopted at Chapter 15B-9, Florida Administrative Code, implementing the above-cited statutory authority and related to wrecker service operation.

25. Rule 15B-9.007(7), Florida Administrative Code, provides that a lack of reputability shall be grounds for removal of a wrecker operator from the rotation list. Rule 15B-9.007(7), Florida Administrative Code, provides several examples of lack of reputability. These examples include conviction of any felony when the person's civil rights have not been restored; conviction of a felony or first degree misdemeanor directly related to the business of operating a wrecker regardless of whether civil rights have been restored; responding to a call while under the influence of alcohol or any chemical or controlled substance to the extent that normal faculties are impaired; and conviction of the offense of driving under the influence. Additionally, the rule expressly does not limit the finding of lack of reputability to these examples.

26. Rule 15B-9.002(2), Florida Administrative Code, defines an operator or wrecker operator as an individual, partnership, corporation, or business entity engaged for hire in recovery, towing, or removal of wrecked, disabled, stolen, or abandoned motor vehicles. Thus, Rule 15B-9.007(7), Florida Administrative Code, applies to both individual persons or business entities engaged in the towing and storage of vehicles under the rotation wrecker system.

27. Reputable is defined as "enjoying good repute, of excellent reputation; held in esteem; and respectable." See, Webster's Third New International Dictionary (1965). The Petitioner/agency, through its representative who testified to agency policy and interpretation, Major Wright, has interpreted the above-cited rule to mean that a wrecker operator is not deemed reputable if he cannot be trusted with safeguarding vehicles towed and stored by the wrecker operator and their contents, when he responds and conducts his operations pursuant to a "rotation call" by the Florida Highway Patrol personnel. The Petitioner/agency's interpretation of its own rule, unless clearly erroneous, is entitled to great weight. See *Miami Beach v. Miller*, 122 So.2d 578 (Fla. 3d DCA 1960); *Reedy Creek Improvement District v. Department of Environmental Regulation*, 486 So.2d 642 (Fla. 1st DCA 1986); *Little Munyon Island, Inc. v. Department of Environmental Regulation*, 492 So.2d 735 (Fla. 1st DCA 1986). The Petitioner's rule interpretation is intended to safeguard the property of the general public, which has been entrusted to the care and service and custody of wrecker operators chosen by the governmental agency involved, the Florida Highway Patrol. Accordingly, "reputable", as the term is used in Section 321.051, Florida Statutes, and Rule 15B-9.007(7), Florida Administrative Code, which rule expressly indicates that the examples contained therein are not the limiting factors in determining reputability as the rule is presently codified, should be liberally construed to protect the property of the public. See, Section 321.14, Florida Statutes (1989).

28. The evidence of record clearly establishes that the Respondent and his wife maintained exclusive control over the two vehicles in question. In fact, the totality of the testimony indicates that it was, in fact, typically difficult to secure the Respondent's permission to inspect vehicles on his premises and, sometimes, to arrange for their removal. The wheels and tires of the 1986 Mustang were removed from the Shealy vehicle while it was under the exclusive custody and control of the Respondent. This was particularly borne out by Mr. Shealy's testimony to the effect that the wheels and tires were removed on Saturday morning and that upon his threat of involving law enforcement in the matter, they were precipitously re-installed on the vehicle. This fact, corroborated by the testimony of Mr. Shealy to the effect that Mrs. Jarkow had offered to help him obtain a declaration of total loss on the vehicle, leads to the conclusion that the vehicles had the subject parts removed while they were under the exclusive custody and control of the Respondent. Additionally, the tires, wheels and battery of the 1986 Toyota owned by Mr.

Davis were removed by the Respondent or those under his control without the authorization of Mr. Davis. In fact, by asserting exclusive dominion over the property of Davis and Shealy, inconsistent with their ownership interest, and in the case of Davis, not ever returning the purloined parts, it might be said that the Respondent engaged in conversion. See *Mabie v. Tutan*, 245 So.2d 872 (Fla. 3d DCA 1971).

29. The Respondent's reputability concerning these two incidents has been adversely affected. It has been established without rebuttal by the evidence of record culminating in the above Findings of Fact that the Florida Highway Patrol is no longer able to trust the Respondent to perform its caretaking function as a wrecker operator on its rotation list. The owners of the subject vehicles now doubt the honesty and integrity of Jarkow which was aggravated by the fact that Mrs. Jarkow offered, in effect, to commit fraud against the insurance company by further denigrating the value of the Shealy vehicle. The testimony of the manager and office personnel, as well as that of Mr. LaMaster, the appraiser of Piersoll Appraisal Services, in its totality indicates that they have found a lack of trustworthiness in the Respondent and, whenever possible, refused to pick up vehicles from his business or to appraise vehicles on his business site. When they must retrieve vehicles from his yard or conduct appraisals, they must take extra precautions concerning documentation and inspection when dealing with the Respondent. These incidents and the totality of the testimony concerning the conduct of the Respondent's business indicate that his business operations are characterized by a lack of reputability within the meaning of Rule 15B-9.007(7), Florida Administrative Code, as interpreted by the Petitioner/agency. That rule authorizes the Petitioner/agency to remove a wrecker operator for such a lack of reputability. The removal of the Respondent from that wrecker rotation call list falls within the range of the Petitioner's authority set forth in that rule, as well as in Section 321.051, Florida Statutes.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is therefore,

RECOMMENDED that the Respondent, Jarkow's Wrecker Service, be removed as a rotation wrecker operator for Bay County, for Troop A of the Florida Highway Patrol..

DONE AND ORDERED this 31st day of July, 1990, in Tallahassee, Leon County, Florida.

P. MICHAEL RUFF
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of July, 1990.

APPENDIX TO RECOMMENDED ORDER IN CASE NQ. 90-0072

Petitioner's Proposed Findings of Fact

1. Accepted.
- 2-37. Accepted.

Respondent's Proposed Findings of Fact

- 1-9. Accepted.
- 10-26. Accepted.
27. Rejected, as subordinate to the Hearing Officer's findings of fact on this subject matter.
28. Accepted.
29. Accepted.
30. Accepted, to the extent that it depicts what Major Wright's opinion was, rather than as a binding conclusion of law.
31. Accepted.
32. Accepted.
33. Accepted, but not dispositive of any disputed material issues.
34. Accepted, but not dispositive in itself of any material issues. The maintenance of appropriate insurance coverage does not obviate the requirement for demonstrated reputability.

COPIES FURNISHED:

Leonard R. Mellon
Executive Director
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, FL 32399-0500

Enoch Jon Whitney, Esq.
General Counsel
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, FL 32399-0500

R.W. Evans, Esq.
I. Ed Pantaleon, Esq.
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Suite A-432
Tallahassee, FL 32399-0500

Brian D. Hess, Esq.
9108 West Highway 98
Panama City Beach, FL 32408

=====

AGENCY FINAL ORDER

=====

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,

Petitioner,

vs.

CASE NO. 90-0072

JARKOW'S WRECKER SERVICE,

Respondent.

_____ /

FINAL ORDER

This matter came before the Department of Highway Safety and Motor Vehicles for entry of a Final Order upon submission of a Recommended Order by P. Michael Ruff, a duly designated Hearing Officer of the Division of Administrative Hearings. Upon reviewing the Recommended Order, the Department adopts the Findings of Fact and Conclusions of Law of the Hearing Officer. The Department finds that the Respondent has committed a violation of Rule 15B-9.007(7), FAC, for lack of reputability. Rule 15B-9.007 authorizes the removal of the Respondent from the wrecker rotation list of the Florida Highway Patrol, Troop A, in Bay County.

It is therefore ordered that the Respondent be removed from the Florida Highway Patrol Wrecker Rotation List in Bay County. Judicial review of this Order may be initiated pursuant to section 120.68, Florida Statutes, by filing a Notice of Appeal in the District Court of Appeal for the First District, State of Florida, or in any other district court of appeal in this state in the appellate district where the party resides. One copy of the Notice of Appeal

must be filed with the Department and the other copy, together with the filing fee, must be filed with the court within 30 days of the filing date of this order, pursuant to Rule 9.110, Rules of Appellate Procedure.

PAUL B. TAYLO , (Acting Director)
Florida Highway Patrol
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, Florida 32399-0550

I hereby certify that the
original has been filed in the
official records of the Florida
Highway Patrol of the Department
of Highway Safety and Motor
Vehicles this 27th day of August,
1990.

Barbara Brooks, Division Clerk

COPIES FURNISHED:

R. W. EVANS
Assistant General Counsel
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Rm. A432
Tallahassee, Florida 32399-0504

I. Ed Pantaleon
Assistant General Counsel
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Rm. A432
Tallahassee, Florida 32399-0504

Colonel Charles C. Hall
Florida Highway Patrol
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Rm. B457
Tallahassee, Florida 32399-0557

Brian D. Hess, Esquire
9108 West Highway 98
Panama City, Florida 32408

P. Michael Ruff, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399

=====

DISTRICT COURT OPINION

=====

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JARKOW'S WRECKER SERVICE,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED.

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,

CASE NO.: 90-2890
DOAH CASE NO.: 90-0072

Appellee.

_____/

Opinion filed June 14, 1991

An appeal from an order of the Department of Highway Safety and Motor Vehicles.

Brian D.. Hess, Panama City, for Appellant.

Enoch J. Whitney, R. W. Evans and Peter N. Stoumbelis, Tallahassee, for
Appellee.

PER CURIAM.

Appellant challenges a final order of the Department of Highway Safety and Motor Vehicles, Division of Florida Highway Patrol, removing it from the wrecker service rotation system. We affirm.

Appellant has participated in the Florida Highway Patrol wrecker rotation system for several years, but in December 1989, the appellee filed an administrative complaint seeking to remove appellant from the system. Removal was sought on the authority of Rule 15B-9.007(7), Florida Administrative Code, which provides in pertinent part that lack of reputability shall be a ground for removal from the rotation list. The rule provides that acts constituting a lack of reputability shall include, but shall not be limited to: conviction of any felony without restoration of civil rights; conviction of any felony or misdemeanor related to the operation of a wrecker, regardless of whether civil rights have been restored; response to a call while under the influence of

alcohol or any controlled substance to the extent that normal facilities are impaired; or conviction of DUI or of any criminal traffic offense. The appellee alleged in its administrative complaint that appellant's lack of reputability was demonstrated by the unexplained removal of parts from two vehicles, each occurring on separate occasions.

The DOAH hearing officer who presided over appellant's hearing found that the appellee had proved parts were removed from vehicles in the exclusive possession and control of appellant. The hearing officer found further that appellee has interpreted the above-referenced rule to mean that a wrecker service is not deemed reputable if it cannot be trusted with safeguarding vehicles towed and stored by it, and that appellee's interpretation of its own rule is entitled to great weight. Also, the hearing officer found that the examples listed in Rule 15B-9.007(7) are not limiting factors in determining reputability under the rule. The hearing officer therefore concluded that it was established, without rebuttal, that the appellee is no longer able to trust appellant and that its business is characterized by a lack of reputability within the meaning of the rule, as interpreted by the appellee.

Appellant urges in this appeal that Rule 15B-9.007(7) requires proof of a conviction in order to establish a lack of reputability. The rule plainly does not so require. Appellant also cites to several portions of the hearing transcript where it is alleged that erroneous evidentiary rulings were made. Appellant, however, fails to make any substantive argument as to each of the cited portions of the record, and, regardless of this deficiency, our review of the record fails to reveal any erroneous rulings and refutes appellant's argument that the hearing officer admitted matters outside the scope of the administrative complaint. In sum, we find the issues raised in this appeal to be totally without merit.

AFFIRMED.

SMITH, NIMMONS and MINER, JJ., CONCUR.