

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HIGHWAY SAFETY )  
AND MOTOR VEHICLES, )  
DIVISION OF MOTOR VEHICLES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 03-1706  
 )  
SAY TEN, INC., d/b/a )  
BIG DADDY'S AUTO, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

This cause came on for formal hearing on July 9, 2003, in Jacksonville, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Michael J. Alderman, Esquire  
Department of Highway Safety  
and Motor Vehicles  
Neil Kirkman Building, Room A432  
2900 Apalachee Parkway  
Tallahassee, Florida 32399

For Respondent: Kenneth Steven Landers  
Officer/Director  
433 Safer Lane  
Jacksonville, Florida 32211

STATEMENT OF THE ISSUE

The issue is whether Respondent violated Section 320.27, Florida Statutes, and if so, what administrative penalty should be imposed.

PRELIMINARY STATEMENT

On or about April 3, 2003, Petitioner Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles (Petitioner) issued an Administrative Complaint against Respondent Say Ten, Inc. d/b/a Big Daddy's Auto (Respondent). The twelve-count complaint alleged that Respondent had violated Section 320.27, Florida Statutes, in the following respects:

(a) Count One, failing to have a title or other proof of ownership for a 1991 Lincoln, which was displayed for sale on October 10, 2001; (b) Count Two, failing to maintain records to verify sales of vehicles referenced in the temporary tag log on October 10, 2001; (c) Count Three, failing to keep records related to proof of purchase, title application, tag and title issuance, proof of sale and odometer disclosure on October 10, 2001; (d) Count Four, failing to complete information on temporary tag #D-872390 and altering/correcting said tag instead of voiding it; (e) Count Five, failing to possess titles or other indicia of ownership and having no records to show application therefore on April 21, 2002; (f) Count Six, failing to maintain records to verify the purchase, sale, exchange, or

receipt for the purchase of sale of vehicles and having no records showing information related to temporary tags, title transfers, and descriptions of vehicles on April 21, 2002; (g) Count Seven, failing to possess titles or other indicia of ownership and having no records to show application therefore on October 11, 2002; (h) Count Eight, failing to display buyer's guides on two vehicles on October 11, 2002; (i) Count Nine, failing to maintain records to verify the purchase, sale, exchange, or receipt for the purchase of sale of vehicles and having no records showing information related to temporary tags, title transfers, and descriptions of vehicles on October 11, 2002; (j) Count Ten, issuing more than two temporary tags to the same person for the same vehicle; (k) Count Eleven, failing to timely file an application for a title; and (l) Count Twelve, failing to provide required information with a renewal application.

On May 1, 2003, Respondent filed an Election of Rights, requesting an administrative hearing. Petitioner referred Respondent's request to the Division of Administrative Hearings on May 9, 2003.

On May 12, 2003, the Division of Administrative Hearings issued an Initial Order. On May 23, 2003, Petitioner filed a Response to Initial Order.

The undersigned issued a Notice of Hearing dated June 5, 2003. The notice scheduled the hearing for July 9, 2003.

On July 1, 2003, Petitioner filed a Motion to Strike Request for Hearing and Return Jurisdiction. During a telephone conference on July 2, 2003, the undersigned reserved ruling on the motion pending proof that the Florida Department of State, Division of Corporations, had reinstated Respondent as an active corporation.

During the hearing, Respondent again asserted that it had filed its application for reinstatement of active corporate status, including sending the Florida Department of State a certified check.

Petitioner presented the testimony of three witnesses and offered one composite exhibit, which was accepted into evidence. Respondent presented the testimony of one witness and offered two exhibits, which were accepted into evidence.

The Transcript was filed on July 29, 2003.

On August 8, 2003, Petitioner filed a Notice of Corporate Status indicating that Respondent's corporate status with the Florida Department of State is active. Accordingly, Petitioner's Motion to Strike Request for Hearing and Return Jurisdiction is hereby denied.

On August 8, 2003, Petitioner filed a Withdrawal of Counts of Administrative Complaint. Pursuant to this pleading, Count

Four and Count Twelve of the Administrative Complaint will not be considered in this Recommended Order.

Petitioner filed a Proposed Recommended Order on August 8, 2003. As of the date of the issuance of this Recommended Order, Respondent had not filed proposed findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale.

2. Respondent is, and has been at all times material hereto, a licensed independent motor vehicle dealer in Florida, having been issued license number VI-29558. Petitioner issued the license based upon an application signed by Brenda L. Johnson, as President. Respondent's address of record is 3707 N. Main Street, Jacksonville, Florida 32206.

3. On or about August 30, 2001, two of Petitioner's compliance examiners conducted an initial records inspection of Respondent's dealership. The purpose of the initial inspection was to determine whether the dealership was complying with statutory and rule requirements. Because the initial inspection was of an educational nature, it gave the compliance examiners an opportunity to provide Respondent with guidance in areas that needed improvement.

4. During the August 30, 2001, inspection, the compliance examiners found violations of Sections 319.23(6), 320.131(7), 320.27(6), 320.27(7), 320.27(9) (b)16, and 320.27(9) (b)17, Florida Statutes. The compliance examiners also found violations of Rule 15C-1.004(3), Florida Administrative Code.

5. Specifically, the August 30, 2001, inspection, included but was not limited to the following violations: (a) titles on vehicles not properly filled out; (b) buyer's guides not posted; (c) no titles to prove ownership on vehicles; (d) no proof of purchase for one vehicle; (d) titles not transferred within 30 days of sale; and (e) temporary tag log not properly filled out.

6. The compliance examiners discussed the above-referenced violations with Respondent's general manager, Steve Landers, advising him that Petitioner would conduct a follow-up inspection within 60 days. The inspectors also advised Respondent's president, Barbara Johnson, about the violations via telephone.

7. On or about October 10, 2001, Petitioner's compliance examiners conducted the 60-day follow-up inspection of Respondent's records. During this inspection, Respondent did not provide the examiners with a title or other proof of ownership for a 1991 Lincoln, Vehicle Identification Number (VIN) 1LNCM82W0MY78. The Lincoln was parked in an area where

other vehicles were displayed for sale. There is no credible evidence that the Lincoln was Mr. Lander's personal vehicle.

8. The October 10, 2001, inspection also revealed that Respondent had issued a total of 50 temporary tags. However, there were no records to verify the sale of the vehicles listed in the temporary tag log.

9. During the October 10, 2001, inspection, the compliance examiners requested Mr. Landers to take copies of all of Respondent's records to Petitioner's office in Jacksonville, Florida, for a continuation of the follow-up inspection. The examiners also made a request for Mrs. Johnson to accompany Mr. Landers to the Jacksonville office.

10. On or about October 25, 2001, Petitioner's compliance examiners conducted the continuation of the 60-day follow-up inspection of Respondent's record at the Jacksonville office. During the inspection, the examiners reviewed a total of 30 motor vehicle records, finding the following violations: (a) no proof of purchase for 30 vehicles; (b) no documentation indicating that Respondent had applied for titles for 20 vehicles; (c) no copy of registration for tag and title issuance documentation on 26 vehicles; and (d) no documentation indicating the date sold and odometer disclosure for 27 vehicles.

11. On or about August 21, 2002, Petitioner's compliance examiners conducted another follow-up records inspection on Respondent's premises. At that time, Respondent did not have a title or other proof of ownership for a blue Pontiac Grand Am, VIN 1G2NE5432NM052548, or a red Dodge Shadow, VIN 1B3XP24D6PN566374, both of which were displayed for sale. There is no persuasive evidence that Respondent ever had the required proof of ownership for these vehicles.

12. On August 21, 2002, Respondent's records indicated that it had sold three vehicles: (a) a 1985 Ford, VIN 1CLEG25K047; (b) a 1994 Chevrolet, VIN 2C1MR2464R6749435; and (c) a 1989 Buick, VIN 1G4NJ14D1kM026233. Respondent's records relating to the purchase and sale of these vehicles were incomplete. For instance, there was no proof of purchase/sale for two of the vehicles. Additionally, Respondent did not have records of the odometer disclosure at the time of purchase or sale for any of the three vehicles. Finally, Respondent had issued more than two temporary tags for one vehicle.

13. While the examiners were conducting the August 21, 2002, inspection, Respondent had six vehicles displayed for sale. None of the vehicles had buyer's guides posted in their windows.



14. The examiners reviewed Respondent's temporary tag records on August 21, 2002. They found that several such records lacked required signatures and VINs.

15. On or about October 11, 2002, Petitioner's compliance examiners conducted a third follow-up records inspection on Respondent's premises. At that time, Respondent did not have title or any other proof of ownership for the following: (a) a 1989 Plymouth, VIN 1P3BA56J8KF504260; (b) a 1992 Toyota, VIN JT2EL46B8N0@@8549; and a 1988 Toyota, VIN 1NYAE82G4JZZ536776. Additionally, the 1989 Plymouth and the 1992 Toyota did not have a buyer's guide properly posted.

16. The review of Respondent's sales records on October 11, 2002, revealed that Respondent had sold a 1993 Ford, VIN 1FAPP14JPW130409. However, Respondent did not have proof of purchase or an odometer disclosure statement for this vehicle.

17. On October 11, 2002, Respondent's temporary tag records indicated that it had issued three temporary tags to L. Smith for the 1993 Ford. Respondent issued these tags on June 26, July 26, and August 24, 2002.

18. The October 11, 2002, inspection revealed that Respondent sold the 1993 Ford on June 26, 2002, and applied for the title on September 5, 2002. Thus, Respondent failed to file the application for certificate of title by July 26, 2002, or within 30 days of June 26, 2002.

19. At the conclusion of every inspection referenced above, Petitioner's compliance examiners reviewed the deficiencies they found with Mr. Landers. They discussed the statutes and rules that Respondent had violated.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569, 120.57(1), and 320.27(12), Florida Statutes.

21. Petitioner has the burden of proving by clear and convincing evidence that Respondent violated Section 320.27, Florida Statutes, as alleged in the Administrative Complaint. Department of Banking and Finance, Division of Securities and Investor Protection, 670 So. 2d 932, 934 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 294-295 (Fla. 1987).

22. Section 319.23(6), Florida Statutes, provides in relevant part as follows:

(6) In the case of the sale of a motor vehicle or mobile home by a licensed dealer to a general purchaser, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser, and in each other case such certificate shall be obtained by the purchaser. In each case of transfer of a motor vehicle or mobile home, the application for certificate of title, or corrected certificate, or assignment or reassignment, shall be filed within 30 days from the delivery of such motor vehicle or

mobile home to the purchaser. An applicant shall be required to pay a fee of \$10, in addition to all other fees and penalties required by law, for failing to file such application within the specified time. A licensed dealer need not apply for a certificate of title for any motor vehicle or mobile home in stock acquired for stock purposes except as provided in s. 319.225.

23. Section 320.131, Florida Statutes, provides as follows in relevant part:

(2) The department is authorized to sell temporary tags, in addition to those listed above, to their agents and where need is demonstrated by a consumer complainant. . . Except as specifically provided otherwise, a temporary tag shall be valid for 30 days, and no more than two shall be issued to the same person for the same vehicle.

\* \* \*

(7) Any person authorized by this section to purchase and issue a temporary tag shall maintain records as required by this chapter or departmental rules, and such records shall be open to inspection by the department or its agents during reasonable business hours.

24. Section 320.27, Florida Statutes, provides as follows in pertinent part:

(3) APPLICATION AND FEE.--The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain . . . the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the

name of the state under whose laws the corporation is organized . . . .

\* \* \*

(6) RECORDS TO BE KEPT BY LICENSEE.--Every licensee shall keep a book or record in such form as shall be prescribed or approved by the department, in which the licensee shall keep a record of the purchase, sale, or exchange, or receipt for the purpose of sale, of any motor vehicle, the date upon which any temporary tag was issued, the date of the title transfer, and a description of such motor vehicle together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom such motor vehicle was purchased or received or to whom it was sold or delivered, as the case may be. Such description shall include the identification or engine number, maker's number, if any, chassis number, if any and such other numbers or identification marks as may be thereon and shall also include a statement that a number has been obliterated, defaced, or changed, if such is the fact.

(7) CERTIFICATE OF TITLE REQUIRED.--For each used motor vehicle in the possession of a licensee and offered for sale by him or her, the licensee either shall have in his or her possession or control a duly assigned certificate of title from the owner in accordance with the provisions of chapter 319, from the time when the motor vehicle is delivered to the licensee and offered for sale by him or her until it has been disposed of by the licensee, or shall have reasonable indicia of ownership or right of possession, or shall have made proper application for a certificate of title or duplicate certificate of title in accordance with the provisions of chapter 319. A motor vehicle dealer may not sell or offer for sale a vehicle in his or her possession unless the dealer satisfies the requirements

of this subsection. Reasonable indicia of ownership shall include a duly assigned certificate of title; in the case of a new motor vehicle, a manufacturer's certificate of origin issued to or reassigned to the dealer; a consignment contract between the owner and the dealer along with a secure power of attorney from the owner to the dealer authorizing the dealer to apply for a duplicate certificate of title and assign the title on behalf of the owner; a court order awarding title to the vehicle to the dealer; a salvage certificate of title; a photocopy of a duly assigned certificate of title being held by a financial institution as collateral for a business loan of money to the dealer ("floor plan"); a copy of a canceled check or other documentation evidencing that an outstanding lien on a vehicle taken in trade by a licensed dealer has been satisfied and that the certificate of title will be, but has not yet been, received by the dealer; a vehicle purchase order or installment contract for a specific vehicle identifying that vehicle as a trade-in on a replacement vehicle; or a duly executed odometer disclosure statement as required by Title IV of the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. No. 92-513, as amended by Pub. L. No. 94-364 and Pub. L. No. 100-561) and by 49 C.F.R. part 580 bearing the signatures of the titled owners of a traded-in vehicle.

\* \* \*

(9) DENIAL, SUSPENSION, OR REVOCATION.--

\* \* \*

(b) The department may deny, suspend, or revoke any license issued hereunder or under the provisions of s. 320.77 or s. 320.771 upon proof that a licensee has committed, with sufficient frequency so as to establish a pattern of wrongdoing on the part of a

licensee, violations of one or more of the following activities:

\* \* \*

8. Failure to continually meet the requirement of the licensure law.

\* \* \*

16. Willful failure to comply with any administrative rule adopted by the department.

17. Violation of chapter 319, this chapter, or ss. 559.901-559.9221, which has to do with dealing in or repairing motor vehicles or mobile homes. Additionally, in the case of used motor vehicles, the willful violation of the federal law and rule in 15 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to the consumer sales window form.

\* \* \*

(12) CIVIL FINES; PROCEDURE.--In addition to the exercise of other powers provided in the section, the department may levy and collect a civil fine, in an amount not to exceed \$1,000 for each violation, against any licensee if it finds that the licensee has violated any provision of this section .  
. . .

25. Rule 15C-1.004, Florida Administrative Code, provides as follows in relevant part:

(2) Each temporary tag issued shall be completed by the issuer by filling in the information required on such tag in 'Higgins' or similar type of waterproof ink.

(3) Issuers shall maintain records of all temporary tags purchased and all temporary tags issued, in numerical order, for a

minimum of three years from the date of issuance of any such tag. Records shall be maintained so the issuer can account for each temporary tag purchased. Records of temporary tags issued shall include the name and address of the person to whom each temporary tag is issued, the make and vehicle identification number of the vehicle to which the temporary tag is assigned and the date on which the temporary tag was issued.

(4) A temporary tag bearing erasures, white out or corrections is void, regardless of the reason why such modification is made and such tag shall be marked 'VOID' across the face. Any temporary tag voided by an issuer and marked 'VOID' across the face of the tag shall be maintained as part of the temporary tag records required hereunder.

26. Rule 15C-7.002, Florida Administrative Code, provides as follows in pertinent part:

(3) Each dealer shall establish and maintain a written record of each vehicle acquired by and disposed of by him.

\* \* \*

(5) Each dealer shall have either made application for a certificate of title or a duplicate certificate of title as require in Chapter 319, Florida Statutes, or shall have in his possession one of the following indicia of ownership or proof of right of possession for each vehicle from the time he acquires each vehicle until the time he disposes of each vehicle:

(a) A duly assigned certificate of title,

(b) In the case of a new vehicle, a Manufacturer's Statement of Origin is issued to or reassigned to the dealer,

(c) A consignment contract between the owner and the dealer along with a power of attorney from the owner to the dealer authorizing the dealer to apply for duplicate certificate of title and assign the title on behalf of the owner,

(d) A certificate of right of possession issued pursuant to s. 319.36, Florida Statutes,

(e) A court order awarding title of the vehicle to the dealer,

(f) A salvage certificate of title,

(g) A photocopy of a duly assigned certificate of title being held by a financial institution as collateral for a business loan of money to the dealer ('floor plan'), or

(h) A cancelled check or other documentation evidencing that an outstanding lien on a vehicle taken in trade by a licensed dealer has been satisfied and that the certificate of title will be but has not yet been received by the dealer.

(6) Except as otherwise noted below, the record on each vehicle shall contain the following data elements:

(a) Vehicle identification number or motor number

(b) Date acquired

(c) Method of acquisition

(d) Name and address of seller

(e) Manufacturer

(f) Year

(g) Model



(h) Odometer disclosure statement upon acquisition . . .

(i) Previous jurisdiction of title

(j) Title number

\* \* \*

(m) Temporary tag numbers

(n) Temporary tag issue dates

(o) Name and address of purchaser

\* \* \*

(s) Date of disposition of vehicle

(t) Method of disposition

(u) Odometer disclosure statement upon disposition . . .

(v) Date of application for title transfer

\* \* \*

(9) Dealers shall maintain record of temporary tags purchased and issued. The record shall be arranged by a listing in numerical order of each tag purchased and sold. The record shall contain the tag number, the date purchased, the name of the party from whom purchased, the date sold, the name of the party to whom it was sold, the vehicle identification number of the vehicle for which it was issued, the issue date and the expiration date.

(10) Under Section 320.27(9), Florida Statutes . . . the Department is authorized to deny, suspend or revoke a dealer license for failure of any dealer to maintain records in compliance with this rule, or failure of any dealer to provide to the Department reasonable access to records

maintained by the dealer, or failure of any dealer to render to the Department any requested assistance in accessing, searching, locating or translating any record.

27. Rule 15C-7.003, Florida Administrative Code, states as follows in relevant part:

(3) Applications for Motor Vehicle Dealer's License

\* \* \*

(c) All applications shall have attached all documentation and endorsements necessary to substantiate the applicant's compliance with the requirements of section 320.27(3), Florida Statutes, and this rule. Such documentation or endorsements shall include:

\* \* \*

3. If the dealership is to operate in a corporate capacity . . . a certificate of good standing from the state in which the business is incorporated.

28. Dealers offering used vehicles for sale to consumers are required to prepare, fill in as applicable and display on such vehicles a "Buyers Guide." 16 C.F.R. Section 455.2(a) (2001).

29. Petitioner has withdrawn the allegations set forth in Count Four and Count Twelve. However, Petitioner has met its burden of proving all other allegations in the Administrative Complaint by clear and convincing evidence.

Count One

30. On October 10, 2001, Respondent violated Sections 320.27(7) and 320.27(9)(b)17., Florida Statutes, by failing to have a title or other proof of ownership for a specified vehicle offered for sale by the dealership.

Count Two

31. On October 10, 2001, Respondent violated Section 320.27(9)(b)16., Florida Statutes, and Rules 15C-7.002(3) and 15C-7.002(6), Florida Administrative Code, by failing to maintain proper written records of vehicles acquired and disposed of by the dealership. Specifically, Respondent did not have records to verify the sale of vehicles referenced in the temporary tag log.

Count Three

32. On October 25, 2001, Respondent violated Sections 320.27(6), 320.27(9)(b)16., and 320.27(9)(b)17., Florida Statutes, and Rules 15C-7.002(3) and 15C-7.002(6), Florida Administrative Code, by failing to keep the following records for specified vehicles: (a) proof of purchase; (b) title application; (c) tag registration and title issuance; (d) date of sale; and/or (e) odometer disclosure statement.

Count Five

33. On August 21, 2002, Respondent violated Sections 320.27(7) and 320.27(9)(b)17., Florida Statutes, by failing to

have a title or other proof of ownership for specified vehicles, which were offered for sale by the dealership.

Count Six

34. On August 21, 2002, Respondent violated Sections 320.27(6), 320.27(9)(b)16., and 320.27(9)(b)17., Florida Statutes, and Rules 15C-7.002(3) and 15C-7.002(6), Florida Administrative Code, by failing to keep the following records for specified vehicles: (a) proof of purchase/sale; (b) odometer disclosure statements; and (c) required signatures and VINs in applications for temporary tags. Additionally, Respondent had issued more than two temporary tags for one vehicle. Finally, Respondent did not have buyer's guides properly posted for six vehicles.

Count Seven

35. On October 11, 2002, Respondent violated Sections 320.27(7) and 320.27(9)(b)17., Florida Statutes, by failing to have a title or other proof of ownership for specified vehicles.

Count Eight

36. On October 11, 2002, Respondent violated Section 320.27(9)(b)17., Florida Statutes, by failing to be in compliance with 16 C.F.R. Section 455.2(a)(2001). Specifically, Respondent did not have a buyer's guide properly posted for specified vehicles.

Count Nine

37. On October 11, 2002, Respondent violated Sections 320.27(6), 320.27(9)(b)16., and 320.27(9)(b)17., Florida Statutes, and Rules 15C-7.002(3) and 15C-7.002(6), Florida Administrative Code, by failing to keep the following records for specified vehicles: (a) proof of purchase; and (b) odometer disclosure statement.

Count Ten

38. On October 11, 2002, Respondent violated Sections 320.131(2) and 320.27(9)(b)17., Florida Statutes, by issuing more than two temporary tags to the same person for the same vehicle.

Count Eleven

39. On October 11, 2002, Respondent violated Sections 320.23(6) and 320.27(9)(b)17., Florida Statutes, by failing to timely file an application for certificate of title for a specified vehicle.

40. Petitioner has grounds for disciplining Respondent pursuant to Section 320.27(9)(b), Florida Statutes. Respondent committed the violations with sufficient frequency to establish a pattern of wrongdoing. The violations were willful because Respondent continued to violate the statutes and rules despite being warned.

41. Respondent has shown no persuasive evidence of mitigating circumstances. Therefore, based on Respondent's repeated violations and failure to take corrective action, Petitioner should revoke Respondent's motor vehicle dealer's license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Petitioner issue a final order revoking Respondent's motor vehicle dealer's license.

DONE AND ENTERED this 14th day of August, 2003, in Tallahassee, Leon County, Florida.



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SUZANNE F. HOOD  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of August, 2003.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.