

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HIGHWAY SAFETY )  
AND MOTOR VEHICLES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 05-1157  
 )  
EUROTECH AUTOMOTIVE )  
ENGINEERS, INC. )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Administrative Law Judge Don W. Davis of the Division of Administrative Hearings (DOAH) conducted a final hearing in the above-styled matter on June 2, 2005, in Jacksonville, Florida. The following appearances were entered:

APPEARANCES

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

For Respondent: Sudarshan K. Kuthiala, pro se  
2961 Bernice Drive  
Jacksonville, Florida 32207

## STATEMENT OF THE ISSUES

The primary issues for determination are whether Respondent committed a myriad of violations of Section 320.27, Florida Statutes, which provides certain requirements applicable to motor vehicle dealers. The violations alleged to have been committed by Respondent are inclusive of failures to display a consumer sales window form, to keep certain records of purchases and sales, to keep proper records of temporary tags, and not possessing required proper proof of ownership of two vehicles. In the event that Respondent committed these violations, an additional issue is what administrative penalty should be imposed.

## PRELIMINARY STATEMENT

By Administrative Complaint dated January 18, 2005, Petitioner alleged that Respondent had violated various proscriptions applicable to motor vehicle dealers contained in Section 320.27, Florida Statutes.

Respondent elected to dispute the allegations contained in the Administrative Complaint. Consequently, Petitioner referred the matter to DOAH on March 28, 2005, for the conduct of these formal administrative proceedings.

At the final hearing, Petitioner presented testimony of one witness and three exhibits which were admitted into evidence.

Respondent testified in his own behalf and submitted ten exhibits, which were admitted into evidence.

A one-volume Transcript of the final hearing was filed on August 1, 2005. Both parties filed Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

All references to Florida Statutes are to the 2004 edition unless otherwise noted.

#### 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-13051. Petitioner issued the license based upon an application signed by Sudarshan Kuthiala, as President. Respondent's address of record is 5895 St. Augustine Road, Suite No. 8, Jacksonville, Florida 32207.

3. Respondent's president is Sudarshan Kuthiala.

4. On or about March 12, 2004, Petitioner's compliance examiner conducted an annual records inspection of Respondent's dealership. The purpose of that inspection was to determine whether the dealership was complying with statutory and rule

requirements. Arrangements to conduct the inspection were made at least a week ahead of time.

5. At the time of the March 12, 2004 inspection, the compliance examiner found that Respondent did not have the "Buyer's Guide" required by federal law and known as a "consumer sales window form," properly displayed on a vehicle, a 1995 Nissan, Vehicle Identification Number (VIN) 1N6SD16S25C386012, being offered for sale by Respondent.

6. Also, during the March 12, 2004 inspection, the compliance examiner reviewed five purchases and sales of motor vehicles made by Respondent. The examiner discovered that records of two of the vehicles involved did not contain any documentation of the method or proof of purchase or the required odometer disclosure statement at time of acquisition. Another of the vehicles did not have the odometer disclosure statement upon its disposition.

7. An examination during the March 12, 2004 inspection of Respondent's temporary tag log found that the log was incomplete. Respondent's temporary tag log did not include the name and address of the person to whom a temporary tag for a vehicle had been assigned.

8. A follow-up inspection of Respondent's dealership was conducted on June 23, 2004. An appointment for that inspection was made at least one week ahead of time.

9. In the course of that June 23, 2004 inspection, Petitioner's examiner discovered Respondent did not display the required "Buyer's Guide" or "consumer sales window form" required by federal law on a 1992 Mercury automobile with VIN 1MEPM6043NH616615, being offered by Respondent for sale. Further, Respondent's records did not contain the odometer disclosure statement of that vehicle when it was acquired. Additionally, Respondent did not have a title or other proof of ownership of the 1992 Mercury automobile.

10. During the June 23, 2004 inspection, Petitioner's examiner also discovered that records of three purchases and sales of motor vehicles made by Respondent were deficient. Records for two of the vehicles did not have the method or proof of purchase or odometer disclosure statement upon acquisition. Records for one of the vehicles did not have the required odometer disclosure statement upon disposition of the vehicle.

11. The June 23, 2004 inspection also revealed that Respondent's temporary tag log was incomplete. The log did not reveal the name and address of a person to whom a temporary tag was issued or the vehicle identification number of the vehicle for which the temporary tag was issued.

12. Following both of the inspections recounted above, neither Sudarshan Kuthiala nor anyone else on behalf of Respondent offered to provide the missing records or account for

them. In the course of attendance at training school for dealers, Sudarshan Kuthiala was informed of the required forms and the process for their preparation. Also, Respondent's records have been inspected in the past and recordkeeping requirements further explained to Kuthiala.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case. §§ 120.569 and 120.57, Fla. Stat.

14. Because Respondent is subject to penal sanctions in this proceeding, i.e., the imposition of an administrative penalty, Petitioner has the burden of proving by clear and convincing evidence the specific allegations in the Administrative Complaint. See, e.g., Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

15. Petitioner has statutory authority to suspend or revoke motor vehicle dealer licenses. § 320.27(9), Fla. Stat. Further, with regard to violations of state or federal law related to dealing in motor vehicles, Petitioner may impose a fine of up to \$1,000 for each such violation, inclusive of administrative rule violations. § 320.27(12), Fla. Stat.

16. A "Buyer's Guide" must be displayed prominently on any used vehicle offered for sale to a consumer. Petitioner has proven by clear and convincing evidence that Respondent did not

display such a document, known as a "consumer sales window form," on two vehicles offered for sale, a necessary action for compliance with federal law. 15 U.S.C. s.2304, 16 C.F.R. part 455. Respondent's claim that such a display arouses suspicions in the minds of potential purchasers is not a persuasive argument or defense for this violation. Such violation is a ground for revocation or suspension of Respondent's license. § 320.27(9)(b)(17), Fla. Stat.

17. Petitioner has provided clear and convincing evidence of four instances of failure by Respondent to establish and maintain a written record of vehicles acquired for sale. Such failure is a violation of Florida Administrative Code Rule 15C-7.002(3), and Section 320.27(16) and (17), Florida Statutes, for which a license can be suspended or revoked.

18. Respondent failed in six instances to maintain copies of odometer disclosure statements for vehicles, which it sold, a violation of Florida Administrative Code Rule 15C-7.002(4).

19. Clear and convincing evidence also establishes one instance where Respondent did not have in its possession a duly assigned certificate of title or other indicia of ownership of a motor vehicle offered for sale, a violation for which suspension or revocation of license may be imposed by Petitioner.

§ 320.27(9)(b)16-17 and Fla. Admin. Code R. 15C-7.002(5).

20. Respondent failed in two instances to maintain temporary tag logs showing the name and address of persons to whom tags were issued. Also missing was the applicable VIN number for the motor vehicle involved. This is a violation for which a license may be revoked or suspended. § 320.27(9)(b)16-17, Fla. Stat.

21. In total, Petitioner has provided clear and convincing evidence of 15 separate violations of statute or administrative rule committed by Respondent for which fines totaling \$15,000 could be levied in accordance with provisions of Section 320.27(12), Florida Statutes. Respondent is guilty of all eight counts of the Administrative Complaint.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED that Petitioner enter a final order revoking Respondent's license.



DONE AND ENTERED this 18th day of August, 2005, in  
Tallahassee, Leon County, Florida.

*Don W. Davis*

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DON W. DAVIS  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of August, 2005.

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.