

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GLOBAL EXPRESS, LLC, d/b/a)
AUTO ZONE SALES,)
)
 Petitioner,)
)
vs.) Case No. 09-3965
)
DEPARTMENT OF HIGHWAY SAFETY)
AND MOTOR VEHICLES,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted by video teleconference on October 14, 2009, between West Palm Beach and Tallahassee, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Johnny Romero, owner/manager
Global Express, LLC, d/b/a
Auto Zone Auto Sales
3710 Georgia Avenue
West Palm Beach, Florida 33405

For Respondent: Michael James Alderman, Esquire
Department of Highway Safety and
Motor Vehicles
Neil Kirkman Building, Room A-432
2900 Apalachee Parkway
Tallahassee, Florida 32399

Damaris Reynolds, Esquire
Post Office Box 540609
Lake Worth, Florida 33454

STATEMENT OF THE ISSUE

Whether Petitioner's application for a motor vehicle dealer license should be granted or denied.

PRELIMINARY STATEMENT

Petitioner applied to Respondent for the issuance of a motor vehicle dealer license. By letter dated June 19, 2009, Respondent notified Petitioner that it intended to deny its application and stated the reasons therefor. Petitioner thereafter timely requested a formal administrative hearing to challenge the intended action, the matter was referred to DOAH, and this proceeding followed.

At the final hearing, Petitioner presented the testimony of Mr. Romero and offered 23 sequentially-numbered exhibits, each of which was admitted into evidence. Respondent presented the testimony of Diane J. Buck (Regional Administrator for Respondent's regional office that includes West Palm Beach, Florida); Mildred Pierre-Lys (a compliance officer employed by Respondent); Luz Irizarry (a compliance officer employed by Respondent); and Teresa Pardons (a field supervisor employed by Respondent). Respondent offered the following pre-marked Exhibits, each of which was admitted into evidence: 1, 2, 4-10, 13-16, 18, and 21-23.

Unless otherwise noted, all statutory references are to Florida Statutes (2009).

A Transcript of the proceedings, consisting of one volume, was filed on October 29, 2009. Each party filed a Proposed Recommended Order, which has been duly-considered by the undersigned in the preparation of this Recommended Order.

After the close of the formal hearing, Respondent filed a Motion for Official Recognition of certain Recommended Orders and the ensuing Final Orders issued in conjunction with prior DOAH proceedings. The Motion for Official Recognition is denied as being untimely and unnecessary. As with any other relevant authority cited by the parties, the undersigned is at liberty to consider prior Recommended Orders and Final Orders.

FINDINGS OF FACT

1. Petitioner, Global Express, LLC. (Global Express), is a limited liability company which has submitted to Respondent an application for a license as a motor vehicle dealer under the fictitious name of Auto Zone Auto Sales (the subject application).

2. Johnny Romero and Rosangela Romero, who are husband and wife, are the members and managers of Global Express. Mr. Romero is also known as Johnny Guillermo Romero Peguero.¹

3. Both Mr. and Mrs. Romero signed the subject application on behalf of Global Express before a notary public on May 4,

2009. The following language is contained above the signature lines:

Under penalty of perjury, I do swear or affirm that the information contained in this application is true and correct . . .

4. Part 5 of the application form requires that the "applicant, partner, or corporate officer or director" answer yes or no to certain questions (the Certifications). Each dealership officer is required to answer these questions under penalties of perjury.

5. Relevant to this proceeding, both Mr. and Mrs. Romero answered the following question in the negative:

Has this applicant, partner, or corporate officer or director ever had a surety bond cancelled?

6. Relevant to this proceeding, both Mr. and Mrs. Romero answered the following question in the negative:

Has this applicant, partner, or corporate officer or director ever been denied or had a dealer license suspended or revoked in Florida or any other jurisdiction?

7. In addition to the foregoing, Mr. and Mrs. Romero answered the following question in the affirmative:

Has this applicant, partner, or corporate officer or director ever been a licensed dealer in Florida or any other jurisdiction?

8. Under their affirmative response Mr. and Mrs. Romero

inserted information reflecting that they had previously been licensed dealers under the license numbered VI/1018283.

9. Pursuant to application executed by Mr. and Mrs. Romero on January 11, 2007, Respondent issued motor vehicle dealer license numbered VI/1018283 to Pronto Cars Corp. (Pronto).

10. Pronto's motor vehicle dealer license bond was cancelled by its surety, Nova Casualty Company, by notice dated December 18, 2007.

11. Pronto's motor vehicle dealer license was suspended by Respondent by Order of Emergency Suspension and Administrative Complaint dated March 20, 2008. That case was assigned the following case number by Respondent: DMV-08-479. The Order suspended Pronto's motor vehicle dealer license because Pronto's surety had cancelled its bond.

12. There was a conflict in the evidence as to whether Mr. Romero ever received a copy of the Emergency Final Order and Administrative Complaint in case DMV-08-479. That conflict is resolved by finding that Ms. Pierre-Lys, acting in her capacity as a compliance officer for Respondent, served a copy of the Order of Emergency Suspension and Administrative Complaint on Mr. Romero on April 16, 2008.

13. Mr. Romero, on behalf of Pronto, signed and submitted an election of rights form dated May 5, 2008, which provided, in relevant part, as follows: "I have read the Administrative

Complaint filed in this matter [DMV-08-479] and understand my options." Immediately before Mr. Romero's signature is a check in a box indicating that Mr. Romero was exercising the following option:

"I have not obtained a surety bond and wish to voluntarily relinquish my motor vehicle license. I have completed and am returning the Voluntary Relinquishment of License form within 21 days from the date of my receipt of this administrative complaint."

14. On May 23, 2008,² Respondent issued its Final Order in its case number DMV-08-479, thereby canceling Pronto's motor vehicle dealer's license. The Final Order directed Pronto to surrender its license and all dealer and temporary tags in its possession. The Final Order also contained the following:

It is further ORDERED and ADJUDGED that the Order of Emergency Suspension and Administrative Complaint filed herein is DISMISSED and this case is hereby CLOSED.

15. Mr. Romero called Respondent's compliance officer, Luz Irizarry, on March 6, 2009, told her that he wanted to obtain a motor vehicle dealer license, and asked whether he would have to go to a school for new dealers. Ms. Irizarry referred the inquiry to Ms. Buck, who determined that Mr. Romero would have to attend the school because Pronto had received consumer complaints, Pronto's surety had cancelled its bond, and Pronto's license had been suspended and subsequently revoked. On

March 9, 2009, Ms. Irizarry informed Mr. Romero of the reasons he would have to go to dealer school, and specifically discussed with him the fact that Pronto's operations had been suspended.

16. When he signed the Certifications on May 4, 2009, Mr. Romero had actual knowledge that Pronto's surety bond had been revoked and that Pronto's motor vehicle dealer license had been suspended. Mr. Romero's contends that he was confused about his answers because he thought he had bought the surety bond for its full term and because he thought the Final Order entered by Respondent dismissed the suspension of his license. Those contentions are rejected. It is clear from his answer pertaining to the license that had been issued to Pronto that Mr. Romero understood as a principal of Pronto he would have to disclose the revocation of Pronto's surety bond and the suspension of Pronto's motor vehicle dealer license on the subject application.

17. Mr. and Mr. Romero's Certifications under section 5 of the subject application pertaining to the revocation of a surety bond and the suspension of a motor vehicle dealer license are willful, material misrepresentations of fact.

18. On February 26, 2008, Respondent discovered that Pronto had moved its business location and was doing business at a location that had not been approved by Respondent.

19. On April 1, 2009, Mrs. Romero drove a motor vehicle

displaying a "For Sale" sign. The vehicle had a temporary tag on it that had been issued to Pronto. The possession of that temporary tag violated the Final Order entered in Respondent's case number DMV-08-479, which ordered Pronto to immediately surrender all temporary tags to Respondent.

20. On April 27, 2009, Mrs. Romero displayed, or acquiesced in the display of, another car with a "For Sale" sign on it parked in front of Global Express's proposed, but unlicensed, location. That car had a temporary tag on it that had been issued to Pronto. The temporary tag was filled out to show the name of another dealer. The possession of that temporary tag violated the Final Order entered in Respondent's case number DMV-08-479, which ordered Pronto to immediately surrender all temporary tags to Respondent.

21. On April 2, 2009, Mr. Romero had 13 motor vehicles titled in his name. Although he asserts that some of the motor vehicles were bought in conjunction with a taxi service he operated, he admitted that some of these vehicles had been purchased for resale.

22. Mr. Romero acquired a 1966 Ford motor vehicle on May 9, 2009, and sold the vehicle on May 21, 2009.

23. Mr. Romero acquired a 1999 Chevrolet motor vehicle on May 18, 2009, and sold the vehicle on May 25, 2009.

24. Mr. Romero acquired another Chevrolet motor vehicle on May 20, 2008, and sold the vehicle on May 31, 2009.

25. Respondent established that during April and May 2009, Mr. Romero engaged in the business of dealing in motor vehicles without a license.

26. On March 30, 2009, Mr. Romero paid Respondent for the registrations of ten motor vehicles with worthless checks.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the subject matter parties to this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

28. Pursuant to the provisions of Section 320.27, Florida Statutes, Respondent is the agency of the State of Florida responsible for the licensing and regulation of motor vehicle dealers.

29. This is a de novo proceeding designed to formulate final agency action. See Hamilton County Bd. of County Com'rs v. State Dep't. Environmental Reg., 587 So. 2d 1378 (Fla. 1st DCA 1991) and § 120.57(1)(k), Fla. Stat.

30. Petitioner has the burden of proving by a preponderance of the evidence that the subject application should be granted. See Department of Banking and Financing, Division of Securities and Investor Protection, 670 So. 2d 932 (Fla. 1996); Florida Department of Transportation v. J. W. C.

Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); and Florida Department of Health and Rehabilitative Services v. Career Service Commission, 289 So. 2d 412, 414 (Fla. 4th DCA 1974). The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000). A preponderance of the evidence means that something is more probable than not. See Fireman's Fund Indemnity Co. v. Perry, 5 So. 2d 862 (Fla. 1942).

31. Section 320.27(9)(a)1., Florida Statutes, authorizes Respondent to deny an application for a motor vehicle dealer license if the applicant has committed a "willful misrepresentation" in the application. There is no statutory definition of the term "willful misrepresentation" relevant to this proceeding. There is no doubt that the subject application contained two separate misrepresentations of fact, one pertaining to the revocation of Pronto's surety bond and the other pertaining to the suspension of Pronto's motor vehicle dealer's license. Counsel for Respondent represents that there has been no judicial interpretation of the term "willful misrepresentation" as used in Section 320.27(9)(a)(1), Florida Statutes, and the undersigned has been unable to find such an interpretation. Consequently, in determining whether the

misrepresentations in the subject application were "willful" misrepresentations, the plain meaning of the term "willful" will be utilized. "Willful" acts are deliberate acts. See The American Heritage Dictionary of the English Language (Houghton Mifflin Co., 1981) (at page 1466). Willful acts are those done voluntarily, knowingly and intentionally, as opposed to acts that are accidental or unintentional. There can be little or no doubt that Mr. Romero knew that Pronto's surety bond had been revoked and that Pronto's motor vehicle dealer's license had been suspended and voluntarily relinquished when he signed the Certifications on May 4, 2009. There also can be little or no doubt that the two misrepresentations discussed above were willful misrepresentations within the meaning of the cited statute.

32. Section 320.27(2), Florida Statutes, provides, in part, as follows:

(2) LICENSE REQUIRED.--No person shall engage in business as, serve in the capacity of, or act as a motor vehicle dealer in this state without first obtaining a license therefor in the appropriate classification as provided in this section. . . .

33. Respondent proved that, without the requisite license, Mr. and Mrs. Romero engaged in the business as a motor vehicle dealer in April and May of 2009, in violation of Section 320.27(2), Florida Statutes.

34. Section 320.27(3), Florida Statutes, requires a motor vehicle dealer to describe the exact location of its business and requires a supplemental license to operate at premises other than the licensed premises. Respondent proved that Mr. and Mrs. Romero violated that provision by moving Pronto from its licensed premises to an unlicensed location.

35. Section 320.18(1), Florida Statutes, provides that Respondent can cancel any registration if the registration was paid for by a check that was later dishonored. Mr. Romero paid Respondent for ten vehicle registrations with checks that were later dishonored. As a consequence, those registrations were cancelled.

36. Pursuant to Section 320.27(9)(b)17, Florida Statutes, Respondent may deny a motor vehicle dealer license 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 Chapter 320, Florida Statutes. Respondent established by the requisite standards that Mr. and Mrs. Romero committed multiple violations of Chapter 320, Florida Statutes, which, taken together, constitute a pattern of wrongdoing.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent Department of Highway

Safety and Motor Vehicles enter a final order adopting the Findings of Fact and Conclusions of Law contained in this Recommended Order. It is further RECOMMENDED that the final order deny the subject application.

DONE AND ENTERED this 30th day of November, 2009, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of November, 2009.

ENDNOTES

^{1/} Mr. Romero signed some documents referenced in this proceeding using the last name of Romero and others using the last name of Peguero. No distinction has made in this Recommended Order because there is no dispute that Mr. Romero is the individual who signed all documents attributed to him in this Recommended Order. Respondent does not assert, and the undersigned does not infer, that Mr. Romero used two last names for a nefarious purpose.

^{2/} The signature date on the Final Order in case DMV-08-479 has an incorrect date of January 23, 2008. For the reasons cited by Respondent in its Proposed Recommended Order, the undersigned finds that this incorrect date is the result of a scrivener's error. The correct date is May 23, 2008.

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.