

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION

OFFICE OF FINANCIAL REGULATION,

Petitioner,

vs.

SOHAIL ENTERPRISES, INC.
d/b/a SAM'S CAR,

Respondent.

Administrative Proceeding Docket
No.: 56957
DOAH Case No.: 15-6961



FINAL ORDER

This cause came on for consideration and final agency action. Upon review of the complete record in this case, including the attached Recommended Order and Exceptions to the Recommended Order filed by Petitioner, and being otherwise fully advised in the premises, the Commissioner hereby finds:

1. The Commissioner, as head of the Office of Financial Regulation ("Office"), has jurisdiction over the subject matter of this case and the parties hereto.
2. The entry of this Final Order and compliance herewith by Respondent shall conclude the above-referenced administrative proceeding.

RULING ON EXCEPTIONS

Petitioner filed one exception to the Recommended Order:

1. The exception to paragraph 58 of the Recommended Order, which addresses the Administrative Law Judge's ("ALJ") justification for reducing the administrative fine, is accepted. Specifically, the ALJ stated as follows:

OFR is seeking to impose a \$3,500 fine which is far below the maximum fine that could be imposed. Nevertheless, certain factors justify a lower fine.

Those factors include the lack of any intent on the part of Sam's Car to commit the violations at issue, the lack of any evidence of consumer harm, and the lack of any evidence that Sam's Car has a prior disciplinary history..

2. The Recommended Order states in paragraphs 30 – 33 that the Office proved its case by clear and convincing evidence. The administrative fine sought by the Office in this case was reduced from the maximum of \$7,500 to \$3,500, an amount acknowledged by the ALJ as being “far below the maximum fine that could be imposed.” The ALJ then further reduced the fine to \$1,000, citing lack of intent or inadvertence, no evidence of consumer harm, and no prior disciplinary history. No statutory authority or legal case law is cited in support of the recommended reduction.

3. The Office's penalty guidelines and their application, as well as the aggravating and mitigating factors that were considered by the Office in deriving the proposed penalty in this case, is part of the record. (Transcript 192-195) The Office previously applied two mitigating factors: no prior disciplinary history and no evidence of consumer harm. Lack of intent was not considered in the determination of penalty in this case.

4. In paragraph 57, the ALJ acknowledged the relevant disciplinary guidelines under rule 69V-85.111(3)(b), Florida Administrative Code to establish penalties, and that the proposed penalty in this case conforms to the guidelines. Mitigating and aggravating circumstances include: (1) the severity of the act; (2) the degree of harm to the consumer or public; (3) the number of times the acts previously have been committed by the person; (4) the disciplinary history of the person; and (5) the status of the person at the time the act was committed. Whether a licensee intended to violate the law is not listed as an aggravating or mitigating circumstance under this rule, nor is intent an element to be proven in any of the statutory violations alleged in the Administrative Complaint.

5. Aggravation and mitigation are to be applied fairly and in a nondiscriminatory manner. The rule does not contemplate the application of a particular mitigating or aggravating factor more than once in a case, nor is intent or inadvertence in violating the law a factor to be considered.¹ Although a licensee may regard the application of a mitigating factor more than once to be favorable and advantageous since the fine amount would be reduced, the licensee would likely view it as blatantly unfair if the Office applied the same aggravating factor more than once, thereby resulting in an increased fine amount.

6. The ALJ's conclusion that the fine should be further reduced for the reasons stated in the Recommended Order is less reasonable than the agency's conclusion that the proposed penalty is appropriate. The Office's conclusion of law regarding the penalty is as, or is more, reasonable than the ALJ's conclusion of law. Therefore, the exception is GRANTED.

IT IS ACCORDINGLY ORDERED:

A. The attached Recommended Order is adopted by the Office and incorporated by reference as if fully stated herein, with the exception of paragraph 58, and the recommended penalty of \$1,000.

B. Respondent shall pay an administrative fine in the amount of Three Thousand Five Hundred Dollars (\$3,500.00), submitted in the form of a money order or cashier's check made payable to the Department of Financial Services, and sent to the attention of Agency Clerk, c/o Attorney Scott Tavolieri, Post Office Box 8050, Tallahassee, Florida 32314-8050 within 30 days of the entry of the Final Order.

C. Respondent shall in the future comply with all requirements of Chapter 520, Florida Statutes, and the rules promulgated pursuant to Chapter 520, Florida Statutes.

¹ In fact, the Recommended Order states that "[e]very man is supposed to know the law . . ." and that ignorance of the law is not a reason (for violating the law). See paragraph 56.

DONE and ORDERED this 15th day of June 2016, in Tallahassee,
Leon County, Florida.


DREW J. BREAKSPEAR, Commissioner
Office of Financial Regulation

NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS AMENDED FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK FOR THE OFFICE OF FINANCIAL REGULATION AS FOLLOWS:

By Mail or Facsimile

OR

By Hand Delivery

Agency Clerk
Office of Financial Regulation
P.O. Box 8050
Tallahassee, Florida 32314-8050
Phone: (850) 410-9889
Fax: (850) 410-9663

Agency Clerk
Office of Financial Regulation
General Counsel's Office
The Fletcher Building, Suite 118
101 East Gaines Street
Tallahassee, Florida 32399-0379
Phone: (850) 410-9889

A COPY OF THE NOTICE OF APPEAL, ACCOMPANIED BY THE FILING FEES AS REQUIRED BY LAW, MUST ALSO BE FILED WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 2000 DRAYTON DRIVE, TALLAHASSEE, FLORIDA 32399-0950, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. **THE NOTICE OF APPEAL MUST BE FILED WITH BOTH THE AGENCY CLERK FOR THE OFFICE OF FINANCIAL REGULATION AND THE DISTRICT COURT OF APPEAL WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order and Notice of Rights has been furnished by U.S. mail to Sohail Enterprises, Inc., c/o A. Mirza Ahmad, 3415 Maxwell Street, Pensacola, Florida 33505, this 15th day of June, 2016.



GIGI HOLDER

Agency Clerk

Florida Office of Financial Regulation

Tallahassee, FL 32314-8050

Post Office Box 8050

Email: Agency.Clerk@flofr.com

Tel: (850) 410-9889

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