

**STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES**

MIDTOWN CYCLES OF DAYTONA, INC.,
d/b/a MIDTOWN MOTORS,

Petitioner,

vs.

HSMV Case No.: MS-18-471

DOAH Case No.: 18-2230

EXOTIC MOTOR CARS OF DAYTONA
BEACH, LLC d/b/a ALL OUT
POWERSPORTS AND MOTRAC
MOTORCYCLES, LLC,

Respondents.

FINAL ORDER NO. :
HSMV-19-0381-FOI-MS
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

FINAL ORDER

This matter comes before the Department of Highway Safety and Motor Vehicles upon submission of an Order Closing File Without Prejudice and Relinquishing Jurisdiction issued November 13, 2018, by the Honorable James H. Peterson, III, Administrative Law Judge of the Division of Administrative Hearings, based on Petitioner’s Motion for Case Resolution filed November 7, 2018, and Respondent’s Statement of Fact filed November 7, 2018.

Upon jurisdiction being relinquished to the Department, to ensure all parties had a full opportunity to be heard on the matter, on November 27, 2018, the Department issued an Order Requiring Response and Placing Case in Abeyance, which directed the parties to confer and advise the Department as to the status of settlement negotiations by December 31, 2018. The order further notified the parties that failure to timely advise the Department as directed may result in entry of a final order dismissing the case and closing the file. The Department has received no response from the parties.

Upon review of the Order Closing File Without Prejudice and Relinquishing Jurisdiction and the record in the above-styled case, and being fully advised in the premises, the Department hereby dismisses the petition as moot. Accordingly, it is **ORDERED** that the case is **CLOSED**. If the Respondents subsequently reapply for this franchise location, notice of a new application must be published in the Florida Administrative Register pursuant to section 320.642(1), Florida Statutes.

DONE AND ORDERED this 17th day of June, 2019, at Tallahassee, Leon County, Florida.

FILED FLHSMV AGENCY CLERK
JUN 17 2019



Robert Kynoch, Director of Motorist Services
Department of Highway Safety and Motor Vehicles
2900 Apalachee Parkway
Tallahassee, Florida 32399

COPIES FURNISHED this 17th day of June, 2019, to:

Joseph R. Gillespie, Agency Clerk
Department of Highway Safety
and Motor Vehicles
Room A432, Mail Stop 2
2900 Apalachee Parkway
Tallahassee, Florida 32399
ogcfiling@flhsmv.gov
joegillespie@flhsmv.gov

Roberto Giostri
Motrac Motorcycles, LLC
10501 South Orange Avenue, Unit 114
Orlando, Florida 32824

David Hurtibise
Midtown Motors
739 Mason Avenue
Daytona Beach, Florida 32117
david@mynewcycle.com

Randy Wright
All Out Powersports
1732 Covendale Lane
Port Orange, Florida 32128

Palmer Brand, Chief of Dealer Services
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Room A-312, MS 65
2900 Apalachee Parkway
Tallahassee, Florida 32399-0635
palmerbrand@flhsmv.gov

NOTICE OF APPEAL RIGHTS

A party adversely affected by this final order may seek judicial review as provided in section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.190. Judicial review is initiated by filing a notice of appeal with the Agency Clerk, and a copy of the notice of appeal, accompanied by the filing fee, with the appropriate district court of appeal. The notice of appeal must conform to the requirements of Florida Rule of Appellate Procedure 9.110(d) and must be filed (*i.e.*, received by the Agency Clerk) within thirty days of rendition of this final order.

Filing with the Department's Agency Clerk may be accomplished by U.S. mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Joseph Gillespie, DHSMV Agency Clerk, Department of Highway Safety and Motor Vehicles, 2900 Apalachee Parkway, A-432, MS-2, Tallahassee, Florida 32399. The facsimile number is (850) 617-5112. The email address is OGCFiling@flhsmv.gov.

NOV 28 2018

Page 1 of 8

STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

MIDTOWN CYCLES OF DAYTONA, INC.,
d/b/a MIDTOWN MOTORS,

Petitioner,

vs.

HSMV Case Nos.: MS-18-471

DOAH Case Nos.: 18-2230

EXOTIC MOTOR CARS OF DAYTONA
BEACH, LLC d/b/a ALL OUT
POWERSPORTS AND MOTRAC
MOTORCYCLES, LLC,

Respondents.

ORDER REQUIRING RESPONSE AND PLACING CASE IN ABEYANCE

This matter comes before the Department of Highway Safety and Motor Vehicles upon submission of an Order Closing File Without Prejudice and Relinquishing Jurisdiction issued November 13, 2018, by the Honorable James H. Peterson, III, Administrative Law Judge of the Division of Administrative Hearings, based on Petitioner’s Motion for Case Resolution filed November 7, 2018; Respondent’s Statement of Fact filed November 7, 2018; and a telephonic hearing conducted by the Administrative Law Judge in which “the parties announced that they had, in theory, resolved this case to the satisfaction of both parties, but wanted to make sure that their rights were preserved should the agreement between them not be finalized.”¹

Upon review of the Order and the record in the above-styled case, and being fully advised in the premises, it is **ORDERED** that:

1. The above-styled case is held in abeyance until December 31, 2018. The case will immediately be returned to active status January 1, 2019, or upon motion of any party before that date; and
2. No later than December 31, 2018, the parties shall confer and advise the undersigned in writing as to the status of the settlement negotiations. Failure of the parties to timely advise the undersigned as directed may result in entry of a final order dismissing the case and closing the file.

¹ Order Closing File Without Prejudice and Relinquishing Jurisdiction, DOAH Case No. 18-2230 (Fla. DOAH Nov. 13, 2018).

NOV 28 2018

Page 2 of 8

DONE AND ORDERED this 27th day of November, 2018.

Robert Kynoch, Director of Motorist Services
Department of Highway Safety and Motor Vehicles
2900 Apalachee Parkway
Tallahassee, Florida 32399

COPIES FURNISHED this 28th day of November, 2018, to:

Joseph R. Gillespie, Agency Clerk
Department of Highway Safety
and Motor Vehicles
Room A432, Mail Stop 2
2900 Apalachee Parkway
Tallahassee, Florida 32399
ogcfiling@flhsmv.gov
joegillespie@flhsmv.gov

Roberto Giostri
Motrac Motorcycles, LLC
Unit 114
10501 South Orange Avenue
Orlando, Florida 32824

David Hurtibise
Midtown Motors
739 Mason Avenue
Daytona Beach, Florida 32117
david@mynewcycle.com

Randy Wright
All Out Powersports
1732 Covendale Lane
Port Orange, Florida 32128

Palmer Brand, Chief of Dealer Services
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Room A-312, MS 65
2900 Apalachee Parkway
Tallahassee, Florida 32399-0635
palmerbrand@flhsmv.gov

NOV 28 2018

Page 3 of 8

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIDTOWN CYCLES OF DAYTONA, INC.,
d/b/a MIDTOWN MOTORS,

Petitioner,

vs.

Case No. 18-2230

EXOTIC MOTOR CARS OF DAYTONA
BEACH, LLC, d/b/a ALL OUT
POWERSPORTS AND MOTRAC
MOTORCYCLES, LLC,

Respondents.

_____ /

ORDER CLOSING FILE WITHOUT PREJUDICE AND RELINQUISHING
JURISDICTION

At a telephonic hearing held on the Motion for Case Resolution filed on behalf of Midtown Cycles of Daytona Beach Inc., d/b/a Midtown Motors (Petitioner) and the Statement of Fact filed on behalf of Exotic Motor Cars of Daytona Beach, LLC, d/b/a All Out Powersports and Motrac Motorcycles, LLC. (Respondent), the parties announced that they had, in theory, resolved this case to the satisfaction of both parties, but wanted to make sure that their rights were preserved should the agreement between them not be finalized. Therefore, in order to allow this case to be resolved between the parties and preserve their rights asserted in this case, it is,

ORDERED:

1. The final hearing in this case currently scheduled for November 30, 2018, is CANCELLED.

2. The file of the Division of Administrative Proceedings in this case is hereby CLOSED without prejudice to either party reasserting their rights asserted in this case or bringing a subsequent action should the parties fail to resolve the case as anticipated.

NOV 28 2018

Page 4 of 8

3. Jurisdiction of this case is relinquished back to the Florida Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, to the extent necessary for final resolution, or for such other further or appropriate relief or proceedings.

DONE AND ORDERED this 13th day of November, 2018, in Tallahassee, Leon County, Florida.



JAMES H. PETERSON, III
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of November, 2018.

COPIES FURNISHED:

Joseph R. Gillespie, Agency Clerk
Department of Highway Safety
and Motor Vehicles
Room A432, Mail Stop 2
2900 Apalachee Parkway
Tallahassee, Florida 32399
(eServed)

Roberto Giostri
Motrac Motorcycles, LLC
Unit 114
10501 South Orange Avenue
Orlando, Florida 32824

David Hurtibise
Midtown Motors
739 Mason Avenue
Daytona Beach, Florida 32117
(eServed)

NOV 28 2018

Page 5 of 8

Randy Wright
All Out Powersports
1732 Covendale Lane
Port Orange, Florida 32128

NOV 28 2018

Page 6 of 8

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIDTOWN CYCLES OF DAYTONA, INC., d/b/a
MIDTOWN MOTORS,

Petitioner,

Case No. 18-2230
MS-18-471

vs.

EXOTIC MOTOR CARS OF DAYTONA BEACH, LLC,
d/b/a ALL OUT POWERSPORTS AND MOTRAC
MOTORCYCLES, LLC,

Respondents.

Motion for Case Resolution

Dear Judge James H. Peterson, III,

On August 14th, 2018 I received an email from Randy Wright indicating that he wished to sign a document resolving the line-make dispute. On 08-23-18 my staff prepared a document and emailed it directly to Mr. Wright. Mr. Wright returned the notarized document to our office on September 18th, 2018. (See Attachment A)

In light of the fact that Exotic Motor Cars of Daytona Beach, LLC has removed its request to sell the YNGF line-make, Midtown Cycles of Daytona, Inc. requests that this case be resolved in the manner the court sees fit.

Midtown Cycles of Daytona, Inc. wishes to retain the right to use all legal remedies in the event Exotic Motor Cars of Daytona Beach, LLC or any other entity applies to add a line-make protected by our "sphere of influence" to their respective dealers license.

NOV 28 2018

Page 7 of 8

Midtown Cycles of Daytona, Inc. appreciates your time and consideration on this matter. We are hopeful that this issue will be resolved without further issue for any involved parties.

Sincerely,



David L. Hurtibise
CEO Midtown Cycles of Daytona, Inc. d/b/a Midtown Motors
739 Mason Avenue
Daytona Beach, Florida 32117
(386) 265-4747
www.mynewcycle.com

Mailed to the Clerk of DOAH this 19th day of October, 2018.

COPIES FURNISHED:

Joseph R. Gillespie Agency Clerk
(850) 617- 3101

Robert Giostri
(786) 614-6466

David L. Hurtibise
(386) 265-4747

Randy Wright
(386) 310 - 7884

NOV 28 2018

Page 8 of 8

Statement of Fact

Date: 9-18-18

As the decision maker for Exotic Motor Cars of Daytona Beach, LLC, d/b/a All Out Powersports, I make the following statement:

Let it be known by any party with interest: Exotic Motor Cars of Daytona Beach, LLC, d/b/a All Out Powersports, would like to release all claims, applications, requests, or petitions to add the YNGF line-make to our dealers licence issued by the State of Florida. Any submitted request to establish Exotic Motor Cars of Daytona Beach, LLC, d/b/a All Out Powersports, as the YNGF line-make dealer was either made in error or is simply no longer desired. I am releasing any claim to this line-make in hopes of extinguishing the current dispute between myself and Midtown Cycles of Daytona, Inc.


X Randy Wright
Randy Wright Exotic Motor Cars of Daytona Beach, LLC

Notary:

State of Florida
County of Volusia
Signed and sworn to [or affirmed] before me on Sept. 18th, 2018

by _____ . Stamp:

Georgiann Wright
(Notary's official signature)

(Title)  GEORGIANN WRIGHT
MY COMMISSION # GG 063540
EXPIRES: April 20, 2021
Bonded Thru Budget Notary Services

(Commission Expiration) _____