



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Financial Auto Sales

DHA Case No. DOT-23-0004
DOT Case No. 2023DOT030

FINAL DECISION

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Financial Auto Sales LLC by

[REDACTED]

200 S. Executive Dr. #101
Brookfield, WI 53005-4216

[REDACTED]

[REDACTED]

[REDACTED]

Wisconsin Department of Transportation, by

[REDACTED]

P.O. Box 7910
Madison, WI 53707-7910

PROCEDURAL HISTORY

On January 9, 2023, the Wisconsin Department of Transportation (Department) issued a notice immediately revoking the wholesale dealer license of Financial Auto Sales, LLC (Petitioner). On February 8, 2023, a hearing was held before a Department hearing examiner, and the hearing examiner issued a decision on February 14, 2023 upholding the revocation. The Petitioner filed a timely appeal with the Division of Hearings and Appeals, pursuant to Wis. Stat. § 218.0116(4)(c). Administrative Law Judge (ALJ) Angela Chaput Foy conducted a telephone prehearing conference on March 2, 2023.

Pursuant to due notice, the hearing was scheduled and held at the Hill Farms State Office Building in Madison, Wisconsin on March 15, 2023. The hearing was digitally recorded, and the record includes the four digital recordings, exhibits 1 through 7, 9 through 12, and 15. The

parties stipulated that the ALJ take official notice pursuant to Wis. Stat. § 227.45(3) of the Department's newsletter from April 2021, v. 32, no. 2, which is published on the Department's website. On March 23, 2023, ALJ Chaput Foy issued a Proposed Decision affirming the license revocation.

On April 4, 2023, the Petitioner filed objections to the Proposed Decision. On April 10, 2023, the Department filed comments in support of the Proposed Decision.

FINDINGS OF FACT

The Administrator adopts the Findings of Fact set forth in the Proposed Decision, as follows:

1. [REDACTED] is the owner of Financial Auto Sales LLC (Petitioner). Financial Auto Sales LLC's wholesale dealer license location is 200 S. Executive Drive #101 Brookfield, WI 53005. (Ex. 3) [REDACTED] began operating Financial Auto Sales LLC in 2022. (Petitioner testimony)
2. On October 25, 2022, the Department received an email that reported cars with wholesaler license plates were listed for sale on Facebook Marketplace, and the report provided pictures of these vehicles for sale on residential streets. The wholesaler license plates in the pictures belonged to the Petitioner. The matter was assigned to [REDACTED], a Consumer Protection Investigator for the Department's Dealer and Agent Section, to investigate whether a wholesaler was improperly selling vehicles directly to the public. (Ex. 2)
3. On October 31, 2022, [REDACTED] called auto auctions to inquire about vehicles that the Petitioner purchased. The Department received several lists from auto auctions identifying vehicles the Petitioner purchased. (Exs. 5, and 6) On November 4, 2022, [REDACTED] spoke with another Department investigator, [REDACTED], who alerted [REDACTED] to a concern about the Petitioner forging signatures on documents. ([REDACTED] testimony, Ex. 3) [REDACTED] identified vehicles from the auction lists in which the Petitioner requested a replacement title in a previous titled owner's name after this vehicle was sold or traded by that owner. The Department sent questionnaires to the former owners to see if these replacement titles were obtained with their permission. Five former owners completed questionnaires and returned them to the Department. (Ex. 3)

1994 Cadillac Seville

- a. On May 13, 2022, [REDACTED] donated their 1994 Cadillac Seville with VIN [REDACTED] to Rawhide, Inc. (Ex. 7) The vehicle was then sold to the Petitioner at Greater Rockford Auto Auction on October 19, 2022. (Ex. 6)
- b. On October 23, 2022, the Petitioner filed with the Department an Application for a Replacement Title, form MV2119, with form MV2932, Permission to Pick Up

Title, both purportedly signed by [REDACTED]. The permission form provided that [REDACTED] gave [REDACTED] permission to pick up the replacement title. (Ex. 7)

- c. The Department sent [REDACTED] a questionnaire, which [REDACTED] completed and returned to the Department. In the questionnaire, [REDACTED] indicated that he did not complete or sign the replacement title application, that he did not complete or sign the Permission to Pick Up Title form, and that he did not know [REDACTED]. [REDACTED] signature on the questionnaire was different than what was represented to be his signature on the replacement title application and permission to pick up title forms. (Ex. 7)
- d. On October 25, 2022, a Title and License Plate Application, form MV1, was filed with the Department to title the vehicle to a new owner, [REDACTED]. The replacement title erased the Petitioner's ownership from the title history and only reflected a transfer from [REDACTED]. (Ex. 7)

2008 Dodge Grand Caravan

- a. On April 16, 2022, [REDACTED] sold their 2008 Dodge Grand Caravan with VIN [REDACTED] to Kayser Ford in Madison. The vehicle was then sold to the Petitioner at Mid-State Auto Auction on April 26, 2022. (Ex. 9)
- b. On April 30, 2022, the Petitioner filed with the Department an Application for a Replacement Title, form MV2119, with form MV2932, Permission to Pick Up Title, both purportedly signed by [REDACTED]. The permission form provided that [REDACTED] gave [REDACTED] permission to pick up the replacement title. (Ex. 9)
- c. The Department sent [REDACTED] a questionnaire, which [REDACTED] completed and returned it to the Department. In the questionnaire, [REDACTED] indicated that he did not complete or sign the replacement title application, that he did not complete or sign the Permission to Pick Up Title form, and that he did not know [REDACTED]. Additionally, [REDACTED] signature on the questionnaire was different than what was purported to be his signature on the replacement title application and permission to pick up title forms, and [REDACTED] indicated that the information on the replacement title application was incorrect with regard to his social security number and birthdate. (Ex. 9)
- d. On May 9, 2022, a Title and License Plate Application, form MV1, was filed with the Department to title the vehicle to a new owner, [REDACTED]. The replacement title erased the Petitioner's ownership from the title history and only reflected a transfer from [REDACTED] to [REDACTED]. (Ex. 9)

2007 Lexus ES

- a. On August 25, 2022, [REDACTED] sold her 2007 Lexus ES with VIN [REDACTED] to Schoepp Motors. The vehicle was then sold to the Petitioner at Mid-State Auto Auction on September 13, 2022. (Ex. 10)
- b. On September 20, 2022, the Petitioner filed with the Department an Application for a Replacement Title, form MV2119, with form MV2932, Permission to Pick Up Title, both purportedly signed by [REDACTED]. The permission form provided that [REDACTED] gave [REDACTED] permission to pick up the replacement title. (Ex. 10)
- c. The Department sent [REDACTED] a questionnaire, which [REDACTED] completed and returned it to the Department. On the form, [REDACTED] indicated that she did not complete or sign the replacement title application, that she did not complete or sign the Permission to Pick Up Title form, and that she did not know [REDACTED]. Additionally, [REDACTED] signature on the questionnaire was different than what was purported to be her signature on the replacement title application and permission to pick up title forms, and [REDACTED] indicated that the information on the replacement title application was incorrect with regard to her social security number and birthdate. (Ex. 10)

2015 Ford Fusion

- a. On August 23, 2022, Gates Auto LLC sold its 2015 Ford Fusion with VIN [REDACTED] to the Petitioner at Mid State Jefferson Auto Auction. (Ex. 11)
- b. On September 6, 2022, the Petitioner filed with the Department an Application for a Replacement Title, form MV2119, with form MV2932, Permission to Pick Up Title, both purportedly signed by an agent of Gates Auto, but the specific name is unclear. The permission form provided that an agent for Gates Auto LLC gave [REDACTED] permission to pick up the replacement title. (Ex. 11)
- c. The Department sent Gates Auto LLC a questionnaire, which [REDACTED], on behalf of Gates Auto LLC, completed and returned to the Department. On the questionnaire, [REDACTED] indicated that Gates Auto LLC did not complete or sign the replacement title application, that Gates Auto LLC did not complete or sign the Permission to Pick Up Title form, and that she did not know [REDACTED]. (Ex. 11)
- d. On September 19, 2022, a Title and License Plate Application, form MV1, was filed with the Department to title the vehicle to a new owner, [REDACTED]. (Ex. 11) The replacement title erased the Petitioner's ownership from the title history and only reflected a transfer from Gates Auto LLC to [REDACTED] (Ex. 11)

2010 Chrysler Town & Country

- a. On August 23, 2022, [REDACTED] gave her 2010 Chrysler Town & Country with VIN [REDACTED] to A&B Automotive, which sold the vehicle to the Petitioner at auction. (Ex. 12)
 - b. On September 7, 2022, the Petitioner filed with the Department an Application for a Replacement Title, form MV2119, with form MV2932, Permission to Pick Up Title, both purportedly signed by [REDACTED]. The permission form provided that [REDACTED] gave [REDACTED] permission to pick up the replacement title. (Ex. 12)
 - c. The Department sent [REDACTED] a questionnaire, which [REDACTED] completed and returned to the Department. On the questionnaire, [REDACTED] indicated that she did not complete or sign the replacement title application, that she did not complete or sign the Permission to Pick Up Title form, and that she did not know [REDACTED]. Additionally, [REDACTED] signature on the questionnaire was different than what was purported to be her signature on the replacement title application and permission to pick up title forms. (Ex. 12)
 - d. On September 9, 2022, a Title and License Plate Application, form MV1, was filed with the Department to title the vehicle to a new owner, [REDACTED]. (Ex. 12) The replacement title erased the Petitioner's ownership from the title history and only reflected a transfer from [REDACTED] to [REDACTED]. (Ex. 12)
4. Based on the investigation, [REDACTED] concluded that the Petitioner brought fraudulent replacement title applications to the Department's DMV field stations with fraudulent permission forms allowing him to pick up the replacement titles. ([REDACTED] testimony)
 5. On or about December 20, [REDACTED] emailed his supervisor, [REDACTED], a Unit Supervisor for the Department's Dealer and Agent Section, with his recommendation to revoke the Petitioner's license. (Ex. 3)
 6. On January 6, 2023, the Department's licensing committee reviewed and approved [REDACTED] recommendation to revoke the Petitioner's license. (Ex. 3)
 7. On January 9, 2023, the Department issued a notice immediately revoking the Petitioner's license. (Ex. 1)
 8. On February 14, 2023, a Department Hearing Examiner upheld the revocation. (Ex. 15)
 9. On January 27, 2023, the Petitioner filed a request to review the Hearing Examiner's decision with the Division of Hearings and Appeals.

DISCUSSION

The Proposed Decision by the Administrative Law Judge

In the Proposed Decision, the ALJ determined that the record supported the Department's decision to revoke the Petitioner's wholesaler dealer license based on unfitness as evidenced by intentional fraud related to certificates of title.

The record showed that [REDACTED] went in person to the DMV on several occasions and submitted fraudulent forms to obtain replacement titles for vehicles he purchased from auction. He forged previous title holders' names on replacement title applications, making them fraudulent. He also forged previous title holders' names on forms that gave him permission to pick up the replacement titles from the DMV. [REDACTED] submitted the fraudulent sets of forms for multiple vehicles (1994 Cadillac Seville, 2008 Dodge Grand Caravan, 2007 Lexus ES, 2015 Ford Fusion, and 2010 Chrysler Town & Country), and successfully obtained the replacement titles from the DMV.

The Petitioner did not contest that he forged signatures and submitted fraudulent forms to the DMV to obtain the replacement titles. In fact, he acknowledged that he did this many more times than the five instances raised in this case. Yet, it was his position that the fraudulent practice was commonplace and well-known to the Department, who had been trying to curb it industry wide by educating dealers and issuing warnings before escalating discipline. He maintained that he too should have been warned or merely suspended rather than revoked.

However, the Proposed Decision found that the record did not support a finding of disparate treatment, and that the Petitioner's misconduct, including intentional fraud related to title, supported the Department's exercise of authority to revoke under the law.

Objections and Comments to the Proposed Decision

The objections to the Proposed Decision are a continuation of the Petitioner's position that the Department discriminated against him for being black and Muslim. He maintains that the Department colluded against him with "white privilege," it never intended to give his wholesaler dealership a fair chance in the first place, and it disciplined him more harshly than it would have had he been a white man who made the same mistake. The "white privilege" argument is asserted without evidence to the facts in the record, only that it exists. [REDACTED] submits that the "bad practice" he was using for replacement titles was widely used by others as well, and he would have stopped had the Department warned him. But instead, he maintains, the Department allowed him to continue making the mistake so many times that it led to revocation.

It is important at the outset to put the "bad practice" into context. When a dealer doesn't have a title to a vehicle, loses a title, or possesses a title in which the reassignment spaces on the back are full, then the dealer must obtain a replacement title. There are ways to do this correctly, but some dealers find it arduous and expensive. Accordingly, they can end-run the system by acting in the place of the prior individual owner listed on the title to obtain a clean title. The clean title, however, does not show the dealer's ownership of the vehicle. Instead, when the

vehicle is then registered to a new owner, the title reflects a direct transfer from the prior individual owner to the new individual owner.

The reason this is significant, especially as it relates to a wholesaler dealer, is that wholesale dealers are prohibited from selling vehicles directly to members of the public.¹ The Department is unable to monitor wholesale dealer compliance with this prohibition when the fraudulent replacement title process is used. In other words, a wholesale dealer could cover up direct vehicle sales to retail buyers by using the fraudulent replacement title process because the resulting clean title shows no indication of the wholesale dealer's involvement.

It is apparent, then, that the Department is right to be concerned about dealers who use the replacement title process fraudulently because it directly impacts legitimacy in titles, which is crucial to consumer protection and the Department's ability to effectively supervise licensees. Wis. Stat. § 218.0111(1). The law recognizes the concerns inherent in title-related misconduct by authorizing revocation based on licensee unfitness, and it explicitly calls out intentional fraud related to title certificates as the type of aggravated unfitness worthy of *immediate* revocation. Wis. Stat. §§ 218.0116(1)(a), (4)(am)3. Furthermore, counterfeiting, possessing, or supplying a forged, fictitious, counterfeit, or fraudulently or unlawfully obtained certificate of title is prohibited, and whoever does it is guilty of a Class H felony. Wis. Stat. § 342.32.

The Petitioner maintains that he never used the replacement title process for a nefarious reason such as covering up direct retail sales, and he is correct that the record did not prove otherwise. By the Petitioner's own admission, he used the fraudulent practice because it cost less and was "convenient and affordable" for him as a small business owner.

While the lack of proof of direct sales mitigates the seriousness of his conduct, he nevertheless chose to forge and submit fraudulent documents to the DMV in the course of his business as a licensed wholesale dealer. He did so to save his business time and money, which is surely what every licensed business would prefer to do but doesn't make it right or allow him to avoid consequences. The Department was certainly authorized to act against his license in response, and the record supported the Department's decision to revoke as opposed to a lesser consequence.

The Petitioner testified to his belief that others were treated less harshly than him, but this was credibly rebutted by testimony from the Department. As non-testimonial evidence of disparate treatment, the Petitioner offered a newsletter the Department issued in April 2021 regarding the prohibited replacement title practice. The newsletter, which is available to all dealer licensees, advised that dealers who the Department identified as having obtained replacement titles were sent an educational/warning letter advising them to discontinue the practice. However, the newsletter does not establish disparate treatment against Petitioner because the dealers mentioned in the newsletter were not similarly situated to the Petitioner.

¹ A wholesale dealer is different from a motor vehicle dealer or motor vehicle auction dealer. A wholesale dealer sells used vehicles directly to motor vehicle dealers, purchases used vehicles at auction, and/or purchases used vehicles on behalf of motor vehicle dealers. Wis. Admin. Code § Trans 138.02(14). A licensed wholesale dealer cannot sell vehicles to retail buyers. Wis. Admin. Code § Trans 138.027.

First, the newsletter did not relate specifically to wholesaler dealers (like Petitioner) as opposed to motor vehicle dealers. This is an important distinction because the latter can sell vehicles to the public whereas the former cannot. Accordingly, there are fewer risks associated with motor vehicle dealers who engage in the prohibited practice, which is not the case for wholesaler dealers like Petitioner. This would have justified the issuance of warnings for motor vehicle dealers, whereas a more severe sanction was warranted for wholesale dealers. Additionally, the transactions referenced in the newsletter were web-based as opposed to in-person forgery at the DMV. This likewise would have justified a harsher punishment for the latter.

Regardless, even if the newsletter was an apples-to-apples comparison, it would work against the Petitioner because the newsletter itself was a warning to him, which he intentionally failed to heed. That is, if he thought it applied to all dealers, including himself, then he was on written notice to stop the practice and yet he engaged in the fraudulent behavior multiple times in 2022. In other words, that was his warning and he ignored it.

The record fully supports the findings of fact and conclusions of law in the Proposed Decision. Whatever [REDACTED]' justification for engaging in the fraudulent replacement title process, it is uncontested that he personally forged signatures on title-related documents and submitted them to the Department. It would be absurd for any licensee not to expect serious consequences from the Department in response.

CONCLUSIONS OF LAW

The Administrator adopts the Conclusions of Law set forth in the Proposed Decision, as follows:

1. The Department is responsible for the supervision of motor vehicle wholesale dealer licenses. Wis. Stat. § 218.0111(1).
2. The preponderance of the evidence shows that the Petitioner unlawfully possessed five vehicle titles, in violation of Wis. Stat. § 342.32(1).
3. The Department properly acted within its authority by revoking the Petitioner's motor vehicle wholesale dealer license based on its determination that he engaged in intentionally fraudulent conduct related to certificates of title, pursuant to Wis. Stat. § 218.0116(4)(am)3.
4. The Division of Hearings and Appeals has authority to hear contested cases and issue decisions on behalf of the Department of Transportation pursuant to Wis. Stat. § 227.43(1)(bg).

ORDER

The Administrator adopts the Order set forth in the Proposed Decision, as follows:

NOW THEREFORE, based on the findings of fact and the conclusions of law, it is ordered that the Wisconsin Department of Transportation's revocation of the Petitioner's wholesale dealer license is affirmed.

Dated at Madison, Wisconsin on May 10, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: /s/
Brian K. Hayes
Division Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.