

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

In the Matter of the Motor Vehicle Auction
License of Tri State Auto Auction, LLC, by
the Department of Transportation

Case No: DOT-19-0029

FINAL DECISION

On December 10, 2019, the Department of Transportation, Division of Motor Vehicles, (Department) filed a complaint requesting a hearing seeking an order suspending the motor vehicle auction dealer's license of Tri State Auto Auction, LLC. Pursuant to due notice, the Division of Hearings and Appeals held a hearing on March 6, 2020, in Madison, Wisconsin. Mark F. Kaiser, Administrative Law Judge, presided. The parties filed simultaneous posthearing briefs on April 3, 2020.

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

Tri State Auto Auction, LLC, (Tri State), by

Attorney Kevin Trost
Axley Brynelson, LLP
PO Box 1767
Madison, WI 53701-1767

Wisconsin Department of Transportation (Department), by

Attorney Daniel Graff
Department of Transportation
P.O. Box 7910
Madison, WI 53707-7910

Issues to be Decided

The issues for hearing are whether Tri State engaged in the sale of motor vehicles to unlicensed buyers in violation of Wis. Stats. § 218.34(1)(a) and, if so, whether the violation constitutes a reasonable basis for the license suspension requested by the Department.

The Administrative Law Judge issued a Proposed Decision in this matter on April 23, 2020. On May 7, 2020, the parties filed comments on the Proposed Decision. The Department filed a letter in support of the Proposed Decision. Tri State filed a letter stating that it did not agree with the reasoning or result reached in the Proposed Decision, but did not identify any factual errors that required correction. The Proposed Decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

1. Tri State Auto Auction, LLC, (Tri State) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle auction dealer conducting business at 1911 Highway 80, Cuba City, Wisconsin. Tri State was issued Motor Vehicle Auction Dealer License AUC-1 by the Department. Tri State has been in business since 1952. Licensed auction dealers sell used motor vehicle dealers to wholesale customers.

2. Tri State conducts a weekly auction on Thursdays starting at 4:30 p.m. and lasting till approximately 6:30 p.m. Pursuant to Wis. Stat. § 218.34(1)(a), persons that bid and purchase motor vehicles at licensed motor vehicle auctions must hold a motor vehicle dealer license, a motor vehicle wholesaler license, or a motor vehicle buyer license. Cuba City is located in the southwest corner of Wisconsin. Tri State's facilities are five miles from the Illinois border and ten miles from the Iowa border. A significant number of Tri State's bidders are associated with Illinois and Iowa motor vehicle dealers.

3. Brandon Wilbik, a field investigator in the Department's Dealer and Agent Section of its Division of Motor Vehicles, conducted an inspection of Tri State during an auction on February 22, 2018. The inspection consisted of asking random auction participants whether they possessed a buyer license. Pursuant to Wis. Stat. § 218.34(1)(a), a buyer license is one of the credentials a person may use to purchase motor vehicles at a motor vehicle auction in Wisconsin.

4. Investigator Wilbik checked 26 auction participants present at the auction and concluded eighteen were not compliant with the provisions of Wis. Stat. § 218.34(1)(a) (exh. 3). At least fourteen of the unlicensed bidders were associated with out-of-state motor vehicle dealers, one was associated with a Wisconsin dealer, and the location of the other three motor vehicle dealers that the unlicensed bidders were associated with was unknown (see exh. 2). On June 11, 2018, the Department sent Tri State a warning letter. The letter warned Tri State that its sales to unlicensed bidders constituted violations of Wis. Stat. §§ 218.33(2)(a) and 218.34(2) (exh. 15).

5. On December 13, 2018, Investigator Wilbik conducted another inspection of Tri State during an auction. During this inspection, Investigator Wilbik checked 23 auction participants present at the auction and concluded ten were not compliant with the provisions of Wis. Stat. § 218.34(1)(a) (exh. 6). All ten of the unlicensed bidders were associated with out-of-state motor vehicle dealers (exh.4). On January 2, 2019, the Department sent Tri State a second warning letter (exh. 16).

6. On February 28, 2019, Investigator Wilbik conducted another inspection of Tri State during an auction. During this inspection, Investigator Wilbik checked eighteen buyers present at the auction and concluded six were not compliant with the provisions of Wis. Stat. § 218.34(1)(a) (exh. 9). All six of the unlicensed bidders were associated with out-of-state motor vehicle dealers. Five of the six unlicensed buyers had buyers licenses that expired on December 31, 2018.

7. On April 1, 2019, staff of the Department met with the owners of Tri State. At the conclusion of the meeting, the Department and Tri State executed a stipulation. In the stipulation, Tri State agreed, among other assurances, to:

- a) implement proper precautions to ensure no bids are offered or accepted by unlicensed or improperly licensed bidders as required by Wis. Stat. § 218.34(2);
- b) to physically check buyer licenses for each individual requesting access to bid on or purchase vehicles. If an individual does not physically possess a buyer license, Tri State agreed to verify eligibility to bid through the Department's website;
- c) to verify all buyers for out-of-state and out-of-country motor vehicle dealers have obtained a buyer license, including dealership owners;
- d) to require non-licensed representatives of Wisconsin motor vehicle dealers to complete and submit a buyer license application prior to allowing the applicant to bid on or purchase vehicles. Tri State may allow an applicant to bid while the application is pending with the Department for a maximum period of sixty days.

(Exh. 17)

8. On May 23, 2019, Investigator Wilbik conducted another inspection of Tri State during an auction. During this inspection, Investigator Wilbik checked twenty auction participants present at the auction and concluded four were not compliant with the provisions of Wis. Stat. § 218.34(1)(a) (exh. 11). All four of the unlicensed bidders were associated with out-of-state motor vehicle dealers (exh. 10).

9. On August 8, 2019, Investigator Wilbik conducted another inspection of Tri State during an auction. During this inspection, Investigator Wilbik checked twenty auction participants present at the auction and concluded five were not compliant with the

provisions of Wis. Stat. § 218.34(1)(a) (exh. 13). All five of the unlicensed bidders were associated with out-of-state motor vehicle dealers (exh. 12).

Discussion

The material factual allegations in the Department's complaint are undisputed. The Department alleges that Tri State allowed persons without buyers licenses to purchase or submit bids at auctions they conducted in violation of Wis. Stat. § 218.34(1)(a). Wis. Stat. § 218.34(1)(a) is titled "Purchases from a motor vehicle auction" and provides:

(1) No person may purchase or submit a bid for the purchase of a motor vehicle from a motor vehicle auction unless the following conditions are satisfied:

(a) The person holds a valid motor vehicle dealer, motor vehicle wholesaler, or motor vehicle buyer license.

The unlicensed bidders identified by the Department during Investigator Wilbik's random checks are overwhelmingly associated with out-of-state motor vehicle dealers. These bidders did not have buyer licenses. Tri State questions whether a few of the bidders identified as unlicensed were actually unlicensed; however, Tri State's primary defense is that these facts do not constitute a violation of Wis. Stat. § 218.34(1)(a). Tri State points out that Wis. Stat. § 218.34(1)(a) allows persons holding any one of three types of licenses to purchase vehicles and bid at auctions, but that Investigator Wilbik only asked the random auction participants whether they had a buyer license.

The three types of licenses are a motor vehicle license, a motor vehicle wholesaler license, and a motor vehicle buyer license. Presumably, the out-of-state motor vehicle dealers which were represented by bidders at Tri State held licenses issued by the states in which the dealers were located. Tri State contends that the Department's insistence that bidders associated with out-of-state motor vehicle dealers must have a buyer license is an overly restrictive interpretation of the statute and that persons who are associated with an out-of-state motor vehicle dealer which holds a valid license issued by another state is qualified under Wis. Stat. § 218.34(1)(a) to purchase or bid at a Wisconsin motor vehicle auction.

The most logical interpretation of Wis. Stat. § 218.34(1)(a) is that the three types of licenses listed refers to licenses issued by the Department pursuant to its authority under Wis. Stat. § 218.0114(1), and does not include equivalent licenses issued by other states. This is also the most reasonable interpretation of Wis. Stat. § 218.34(1)(a). Wis. Stat. § 218.34(1)(a) is a consumer protection law that is intended to regulate transactions at motor vehicle auctions and protect consumers. Michael Domke, the chief of the Department's Dealer and Agent Section, testified that unlicensed retail sales and incidents of odometer tampering are associated with vehicles purchased at Wisconsin

motor vehicle auctions. The most reasonable interpretation of Wis. Stat. § 218.34(1)(a) is that the licenses that authorize a person to purchase or bid on motor vehicles at motor vehicle auctions must be ones issued by the Department so that the Department has a mechanism to regulate the conduct of the license holder for the protection of consumers.

Alternatively, Tri State argues that even if allowing persons associated with out-of-state motor vehicle dealers to participate in its auctions without buyer licenses constitute a violation of Wis. Stat. § 218.34(1)(a), extenuating circumstances exist making the suspension of its motor vehicle auction dealers license unreasonable. Based on its geographical location, Tri State has many more bidders associated with out-of-state motor vehicle dealers than other motor vehicle auction dealers in Wisconsin. Tri State's owners testified that the Department's random checks of bidders at its auctions and other efforts to enforce the provisions of Wis. Stat. § 218.34(1)(a), has cost it significant business.

Tri State's situation does appear to be unique in Wisconsin and there is no evidence that Tri State promoted any unlicensed retail sales or odometer tampering. However, the Department issued two warning letters and executed a stipulation with Tri State in an attempt to bring Tri State into full compliance with Wis. Stat. § 218.34(1)(a) with only limited success. Some discipline is warranted. The Department is requesting a seven day suspension. This suspension period is the shortest possible to insure that Tri State will be precluded from conducting one auction, the minimal consequence, that could be imposed.

The Department has satisfied its burden to prove the factual allegations in its complaint are true. These allegations constitute violations of Wis. Stat. § 218.33(2)(a). Pursuant to Wis. Stat. § 218.32(3)(n), a violation of Wis. Stat. § 218.33(2)(a), is grounds for the suspension of a motor vehicle auction dealer license. A suspension of Tri State's license for seven days will have the minimal impact on Tri State's business without unduly depreciating the seriousness of the violations and is reasonable.

Conclusions of Law

The Administrator orders:

1. Pursuant to Wis. Stat. § 218.34(1)(a), no person may bid on or purchase a motor vehicle at a Wisconsin motor vehicle auction without a valid motor vehicle dealer, motor vehicle wholesaler, or motor vehicle buyer license issued by the Department. Tri State's allowance of persons associated with out-of-state motor vehicle dealers to participate in its auctions without buyer licenses constitute a violation of Wis. Stat. § 218.33(2)(a).
2. Pursuant to Wis. Stat. § 218.32(3)(n), a violation of Wis. Stat. § 218.33(2)(a), is grounds for the suspension of a motor vehicle auction dealer license. The Department has carried its burden of proof to show that a seven-day suspension of Tri

State's motor vehicle auction dealer license is a reasonable sanction for its violation of Wis. Stat. § 218.33(2)(a).

3. Pursuant to Wis. Stat. §§ 218.32(4)(b) and 227.43(1)(bg) the Division of Hearings and Appeals has the authority to issue the following order.

Proposed Order

The Administrator orders:

The motor vehicle auction dealer license of Tri State, LLC, shall be suspended for a period of seven days. Pursuant to Wis. Stat. § 218.32(4)(b), this order shall be effective ten days from the date of the final order in this matter.

Dated at Madison, Wisconsin on May 12, 2020.

STATE OF WISCONSIN
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By:



Brian Hayes
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, Fifth Floor
Madison, Wisconsin 53705-5400

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.