

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDG. 68-69
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920**

IN THE MATTER OF:

R.I. RECYCLED METALS,

RESPONDENT.

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DBR No. 14AS002

DECISION

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: January 12, 2015

Appearances: For the Respondent: Michael Mineau, Esq.

For the Department: Jenna R. Algee, Esq.

I. INTRODUCTION

The R.I. Recycled Metals (“Respondent”), holds an auto wrecking and salvage yard license for the property located at 434 Allens Avenue, in the City of Providence, Rhode Island.

The Department received a Complaint against the Respondent on January 31, 2013. The Complaint was filed by Michael J. Chace on behalf of Earl Chace¹ (“Complainant”). The Complaint alleges that the Respondent auto wrecking and salvage yard scrapped a vehicle which had been stolen from Mr. Chace, and that it failed to require proof of ownership for the vehicle prior to scrapping. The Respondent argues that it did, in fact, scrap a stolen vehicle, but that they took steps to comply with the law, and their own business policy, by insuring that

¹ Michael Chace completed and executed the Complaint form, however, his father, Earl Chace, was the titled owner of the vehicle which is the subject matter of this enforcement action. It was Earl Chace who appeared as the Department’s witness at hearing.

the person who presented the stolen vehicle for scrapping was personally known by the manager.

This enforcement action began with a pre-hearing conference held on July 22, 2014 pursuant to the Department of Business Regulation's ("Department") Order To Show Cause Why License Should not be Suspended or other Administrative Penalties Should not Issue, Notice of Hearing and Appointment of Hearing Officer ("Notice") issued by the Department on July 11, 2014. At that time, a discovery schedule was set, the issues pronounced, and the matter was continued for a future status report. After attempts by the parties to negotiate a settlement failed, the undersigned Hearing Officer set a final discovery schedule and a full evidentiary hearing date. That hearing was conducted on January 21, 2015. The Department and the Respondent were both represented by Legal Counsel, and an employee of the Respondent business appeared on its behalf.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R. I. Gen. Laws § 42-14-1, *et seq.*, R.I. Gen. Laws § 42-35-1, *et seq.*, and Commercial Licensing Regulation 6 – *Auto Salvage and Wrecking*, Section 6.

III. ISSUES

The issue in this matter is whether or not the Respondent's auto wrecking and salvage license should be suspended or revoked or other administrative penalty assessed, for acts which violated R.I. Gen. Laws §§ 42-14.2-9 and 42-14.2-14, and Sections 8(a) and 8(c) of Commercial Licensing Regulation 6 – *Auto Wrecking and Salvage Yards*.

IV. STANDARD OF REVIEW FOR AN ADMINISTRATIVE HEARING

It is well settled that in formal or informal adjudications modeled on the federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 at 759 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* at 763-766; see also, *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases); *Parker v. Parker*, 238 A.2d 57, 60 (R.I. 1968) (“satisfaction by a ‘preponderance of the evidence’ [is] the recognized burden [of proof] in civil actions”). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. See *Parker*, 238 A.2d at 60. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87, 100 (R.I. 2006).

V. MATERIAL FACTS AND TESTIMONY

In the presentation of its case at the full hearing, counsel for the Department submitted two (2) documentary exhibits, which were admitted as full. They were as follows: Department’s Exhibit number One is a completed complaint form which was received by the Division of Commercial Leasing and Racing and Athletics on January 31, 2013. Department’s Exhibit Two consists of four pages of photographs forwarded to the Division by the Respondent in response to the complaint.

The Department presented Earl Chace as its first witness. He identified himself as the actual owner of the vehicle which forms the basis for the Complaint initiating this action. The Complaint form was completed and signed by his son, Michael Chace, on his behalf. The

vehicle is registered to Michael Chace, and he had been using the vehicle before it was stored. The witness authenticated the five page Complaint document by stating that he authorized his son to prepare it on his behalf, and that his son told him it had been filed with the Department.

Earl Chace testified that the vehicle, a 1981 GMC car carrier, was stolen from a garage in which it was being stored, located at 244 West Natick Road in Warwick, Rhode Island. He stated that it had been stolen sometime before September 19, 2013, which was the date that he discovered the vehicle missing from the garage, and he reported it stolen to the Warwick Police Department on the same date. He testified that, after filing the stolen vehicle report, he began to visit auto salvage and wrecking yards he knew of to determine if his vehicle had been scrapped at any of them. He visited the Respondent business, and was told by the operations manager, Vincent Murphy, that the vehicle had, in fact, been scrapped and he was given a copy of the sale and scrapping receipt. This document was included in the Complaint filed by the Complainant, which was submitted at hearing and marked as Division's Exhibit #1. This receipt indicated that the vehicle was presented by and purchased from "Lou's Towing", and the amount paid for the vehicle was eight hundred seven dollars (\$807.00). The transaction took place on September 15, 2012.

The Department next presented Louis DePina, the owner/operator of Lou's Auto, a business located at 111 Beckwith Street, Cranston, Rhode Island. He testified that he has learned that the subject vehicle was brought to the Respondent by a man named Keith Burns, who had been known to the witness for "a few years." According to Mr. DePina, he had authorized Burns to use the Lou's Auto account for scrapping services in the past. His further testimony revealed that he believed Burns to have had "a lot of troubles", "had been to jail in

the past” and to be “down on his luck”, so he was helping him out by allowing him to use the Lou’s Auto account with R.I. Recycled Metals.

Mr. DePina testified that he had been with Burns on some occasions when he brought vehicles to the Respondent business for scrapping, but not on September 15, 2012, when the subject vehicle was presented there by Burns alone. He stated that he had no knowledge or participation in the vehicle’s theft or subsequent sale to the Respondent business by Burns for scrapping. He stated that he had no knowledge at the time that the vehicle Burns brought to the Respondent business had been stolen.

The Department’s next witness was John Mancone, Chief Public Protection Inspector for the Department. He testified that, in the scope of his employment duties, he received and processed the complaint in this matter on January 31, 2013. In the course of his investigation into the allegations made in the complaint, he received photographs which had been lifted from a surveillance video on the property which reportedly show Keith Burns and the subject vehicle on the premises on September 12, 2013. He also received a photocopy of the RI driver’s license of Keith Burns, which had been kept on file at the business. These four documents were presented at hearing and admitted as full exhibits (Department’s #2, Full).

Counsel for the Department next presented Vincent Murphy, who identified himself as the Operations Manager of R.I. Recycled Metals. He indicated he had been a full time employee of that business for approximately four (4) years.

He testified that he had known Keith Burns from the numerous times he had brought cars in for scrapping services. He stated that Burns always identified himself as “Lou’s Auto”, and would present vehicles being towed, or he would be with Louis DePina in his truck. He stated that the policy of the Respondent business was to request a driver’s license as

identification of the customers. He testified that he did not, however, check Burns' identification on the date the Complainant's vehicle was brought in, because he was known to the witness, and his identification was "in the system." He stated that he had no reason to believe, when the Complainant's vehicle was brought in, that Burns was not working for Lou's Auto. He explained this as the reason that the receipt was made out to "Lou's Auto" and not to Burns himself.

He testified that it is the policy of the Respondent business to scan a vehicle when it is brought in to retrieve its Vehicle Identification Number ("VIN"). He further stated that it is also the policy of the shop to request proof of ownership of the vehicle by the customer. That step was also not taken by Mr. Murphy when the subject vehicle was presented.

In the Auto Wrecking/Salvage Yard Complaint (marked as Department's Exhibit #1, Full), the Complainant (through his son/agent) makes a number of allegations which, after hearing all the evidence presented at hearing, are uncontradicted.

The Complainant's vehicle was registered, inspected and insured by Mr. Chace. It was discovered by him to be missing from the garage in which it was stored on September 19, 2013.

Having knowledge of local scrapping businesses, Mr. Chase discovered on his own that R.I. Recycled Metals had scrapped his vehicle on September 12, 2013, when it was sold to them by Keith Burns. Burns was paid \$807.00 in cash for the metal. Burns did not have a driver's license on the date in question, as it had been suspended, and Respondent did not positively identify the seller, other than through his visual recognition. No proof of ownership for the vehicle was requested or presented when the vehicle was purchased by the Respondent, and before the vehicle was scrapped.

The complaint further alleges that Burns was convicted and sentenced for the theft of this motor vehicle.

The Respondent at hearing produced no evidence to contradict or defend against the foregoing allegations. In fact, its Operations Manager, who conducted the transaction in question, admitted under oath that he failed to request identification from Burns, stating that he “knew him personally.” Counsel for the Respondent argued that the Manager’s visual recognition of Burns meets the requirements of Commercial Licensing Regulation 6 Section 8 (C), in that it is a “reasonable means” of identification. Visual recognition or personal knowledge is not included in that Section’s list of acceptable methods of identification, nor can it be inferred, so the Hearing Officer finds this argument to be unpersuasive.

VI. DISCUSSION

The facts alleged in this complaint and charged by the Department in this administrative enforcement action are clearly supported by both the testimony and documentary evidence presented at hearing. Though the Respondent testified that R.I. Recycled Metals has policies in place which adhere to the provisions of R.I. Gen Laws § 42-14.2-1 *et seq.* as they relate to the requirements for identification of a seller presenting a vehicle for scrap and identification and verification of the owner of a vehicle presented, his own testimony reveals that these requirements were not met in the transaction which forms the basis for this Complaint.

Further, the Respondent presented no documentary or other evidence which would substantiate his defense. On the contrary, the only documents in evidence relating to the

transaction indicate that a proper identification of the vehicle and seller was not performed, and that a stolen vehicle was scrapped upon a sale by someone other than its rightful owner.

Taken together, there is sufficient and competent evidence in the record that the Respondent willfully failed to comply with the requirements of R.I. Gen. Laws 42-14.2-14, Commercial Licensing Regulation 6, Sections 8(A) and 8(C). Accordingly, pursuant to the Department's authority established in R.I. Gen. Laws § 42-14.2-9, the Respondent is subject to administrative penalties.

VII. FINDINGS OF FACT

1. The facts, as determined by the Hearing Officer, and contained in sections V and VI above, are restated and are incorporated by reference herein.

VIII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter as set forth in Section II, *supra*.
2. Pursuant to R.I. Gen. Laws § 42-14.2-14, “[e]very license holder shall maintain a record in the form prescribed by the department to show: (1) ... the name and residence of the person from whom the vehicle was acquired.”
4. Pursuant to Commercial Licensing Regulation 6 *Auto Wrecking and Salvage Yards* (“CLR 6”), Section 8(A), the “Licensee shall maintain and make available for inspection the name and residence of person from whom acquired and the purchaser’s method of identification.”
5. CLR 6, Section 8(C) provided the “Licensee or his or her or its employee shall verify from the seller of a vehicle or parts from a vehicle his or her or its identity through an

operator's license or social security card or other reasonable means of identification deemed by the Department to be reasonable under the circumstances, for example a passport, military identification or resident alien permit.”

6. Pursuant to R.I. Gen. Laws § 42-14.2-9, the department may deny an application for a license, or suspend or revoke a license after it has been granted, or refuse to renew a license for any of the following reasons: . . . (3) Wilful failure of the applicant or the licensee to comply with the provisions of this chapter or with any rule or regulation promulgated by the board.”

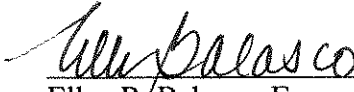
7. Under the standard set forth in Section IV, the statutory framework and analysis set forth herein, and based upon the findings of fact made by the undersigned Hearing Officer after a full evidentiary hearing, there is sufficient evidence to establish by a preponderance that the Respondent failed to comply with the statutory and regulatory requirements attached to its licensure, in that it failed to properly identify and verify the owner of the vehicle in question in this matter, failed to properly identify the vehicle seller's identity and failed to document and maintain records for this transaction.

IX. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Director of the Department issue an order suspending the Respondent's auto wrecking and salvage license for a period of two (2) consecutive business weekdays, not to include a Saturday or Sunday. During the period of suspension, no business activities shall be conducted on the Respondent premises which require licensure as an auto wrecking and salvage business, as defined by R. I. Gen. Laws § 42-14.2-1.

Said suspension shall take place within 30 days from the date of this Decision, and the Respondent shall notify the Division of the dates it will be shut down at least one (1) week prior to its closure.

Dated this 10th day of April, 2015.



Ellen R. Balasco, Esq.
Hearing Officer

ORDER

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

Dated: _____

4/14/15

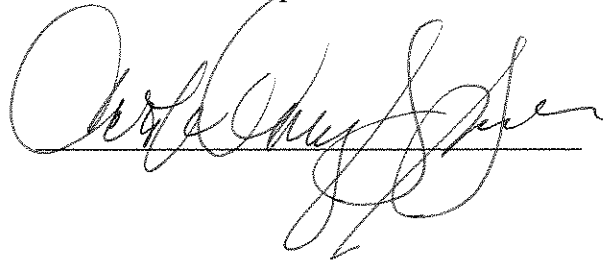


Macky McCleary
Director

THIS DECISION CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-1 ET SEQ. AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.

CERTIFICATION

I hereby certify on this 14th day of April, 2015, that a copy of the within Decision was sent by first class mail, postage prepaid to: Michael J. Mineau, Esq. at McKinnon & Harwood, 1168 Newport Avenue, Pawtucket, RI 02861, and by electronic mail to the following parties at the Department of Business Regulation: Ellen R. Balasco, Esq., Hearing Officer, Jenna Algee, Esq., Legal Counsel, Maria D'Alessandro, Deputy Director Division of Commercial Licensing, and John Mancone, Chief Public Protection Inspector.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "John Mancone".