BEFORE THE

STATE OF WISCONSIN

DIVISION OF HEARINGS AND APPEALS

In the Matter of the Motor Vehicle Dealer License of National Vehicle Management, Inc.	Case No.: 95-H-901
In the Matter of the Motor Vehicle Dealer License of All Star Rent-A-Car, Inc.	Case No.: 95-H-902
In the Matter of the Motor Vehicle Title and Registration Application of National Vehicle Management, Inc. for 1989 Dodge Caravan, VIN 2B4FK55337KR112384, and 1991 Dodge Spirit, VIN 3B3XA66A9MT575481.	Case No.: 95-H-903

FINAL DECISION

The procedural background for case no. 95-H-901 is as follows. By application dated November 5, 1994, National Vehicle Management, Inc. (NVM) applied for a renewal of its motor vehicle dealer license. By letter dated March 3, 1995, the Department of Transportation (Department) denied the application. On March 10, 1995, the Department forwarded to the Division of Hearings and Appeals letters dated February 27, and March 3, 1995, which were considered a request for a hearing to review the Department's denial.

The procedural background for case no. 95-H-902 is as follows. By application filed on March 25, 1994, All Star Rent-A-Car, Inc., (All Star) filed an application for a motor vehicle dealer license. By letter dated June 23, 1994, the Department issued a correctable denial of the application. By letter dated March 15, 1995, the Department withdrew the correctable denial and denied the application for the same reasons as it denied the application of NVM. By letter dated March 28, 1995, All Star requested a hearing to review the denial.

The procedural background for case no. 95-H-903 is as follows. By letter dated March 24, 1995 the Department denied the applications for titles for a 1989 Dodge Caravan and a 1991 Dodge Spirit submitted by NVM. By letter dated March 28, 1995, NVM requested a hearing to review these denials.

A combined hearing on the three matters was held on August 14, 1995 in Madison, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presided. The parties filed initial, post-hearing briefs on September 15, 1995 and response briefs on September 29, 1995.

In accordance with sections 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

National Vehicle Management, Inc. and All Star Rent-A-Car, Inc., petitioners, by

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The Administrative Law Judge issued a Proposed Decision on December 8, 1995. The Department of Transportation filed comments on the Proposed Decision on December 21, 1995, and the petitioners filed comments on December 22, 1995.

The Department primarily objects to the finding that the subject vehicles can lawfully be titled and registered in Wisconsin. The primary basis for this contention is that sec. Trans 149.10(3), Wis. Adm. Code, should apply to the application for titles for these vehicles. As discussed in the decision the applications for Wisconsin titles for these vehicles were filed in December, 1994. Sec. 149.10(3), Wis. Adm Code, did not become effective until January 1, 1995

The Department attempts to get around the timing problem in this case by saying that, although the application for titles were filed in 1994, they were incomplete when filed. The Department's theory is that the applications were not complete when filed in 1994 because NVM did not disclose the existence of the Michigan junking certificates to the Department. The Department does not cite any authority for this interpretation. This argument appears circular since the existence of the Michigan junking certificates is only significant if the existence of junking certificates is a sufficient basis for denying the applications for titles. If one accepts the finding that the vehicles are not "junk" or "junked vehicles," then the existence of junking certificates is not significant and the applications should be considered complete at the time they were filed.

The Department does argue that the vehicles do meet the statutory definition of "junk vehicles." The Department asserts the vehicles meet the definition of "junk vehicle" because the Michigan junking certificates issued for the vehicles provide that the vehicles were not to be titled or registered and were sold for parts or scrap metal only. Based on this language on the junking certificates the Department argues that the vehicles were legally "incapable of operation or use upon a highway" and had "no resale value except as a source of parts or scrap."

This broad interpretation of sec. 340.01(25r), Stats., is contrary to a previous order issued by the Office of the Commissioner of Transportation, (see In the Matter of the Department of Transportation Refusal to Title a 1988 Saab 900, Vehicle Identification Number YS3AT36L8J3006622, Docket No. H-659). Additionally, this argument does not address the apparent inconsistency of the Department's position and sec. Trans 139.04(5)(c), Wis. Adm. Code (discussed at footnote 1 in the Discussion section of the decision). The Department's arguments that the subject vehicles were "junked" or "junk vehicles" at the time the applications for Wisconsin titles were filed are not persuasive.

Two other objections raised by the Department need to be addressed. The Proposed Decision finds that NVM's failure to disclose the existence Michigan junking certificates to the retail buyers is a violation of sec. Trans 139.04(6)1, Wis. Adm. Code. However, it was further found that this violation by itself does not warrant the denial of the applications for motor vehicle dealer licenses. The Department argues that this is a more serious violation than found in the Proposed Decision because the retail customers will be unable to resell the subject vehicles due to the existence of the Michigan junking certificates. The Department apparently interprets sec. Trans 149.10(3), Wis. Adm. Code, as prohibiting the titling and registration of any vehicle which has a junk certificate from another jurisdiction in its title history even if that vehicle has been lawfully titled and registered in Wisconsin.

On its face there is nothing to prohibit the Department from applying sec. Trans 149.10(3), Wis. Adm. Code, in this manner. Conversely, the Department cites no authority, including any rulemaking history, indicating an intent to apply the rule in this manner. If sec. Trans 149.10(3), Wis. Adm. Code, were applied in this manner it obviously would have consequences reaching beyond these two transactions. Assuming, as was testified, that the officers and employees of NVM were not aware of the pending administrative rule at the time of the transactions the petitioners could not have foreseen the harm to the retail customers alleged by the Department. The reason the disclosure violation will have a greater impact on the retail customers than contemplated in the Proposed Decision, is not the result of the actions of the petitioners, but rather because of the manner the Department intends to interpret sec. Trans 149.10(3), Wis. Adm. Code.

The Department's other objection relates to the proposed order. The Department asks the Division, if it does not consider the violation found to constitute adequate grounds for denial of the applications for licenses, to order a suspension of the dealers' licenses for a period of time. As noted by the Department in its objections, in the past the Office of Commissioner of Transportation interpreted its authority in license denial cases to be limited to either affirming or reversing the Department's determination. It was held that the Division did not have the authority to convert a case involving the denial of an application for a license into an action for the suspension or revocation of a license.

A legal basis for this interpretation is that there is a different assignment of the burden of proof in a case involving the denial of a license as opposed to one involving the suspension or revocation of a license. The applicant for a license has the burden to show that the grounds for the denial of a license are unreasonable. In a suspension or revocation case, the Department has the burden to prove the grounds for suspension or revocation of a

license and that those grounds constitute a reasonable basis for the denial or revocation. Because of this different burden of proof, it has been held that a case involving the denial of a license cannot be converted to an action for a suspension or revocation. This holding has been supported by the Department in the past and there is no reason for deviating from it in the instant matter.

The petitioner raises two objections to the Proposed Decision. The first objection is to the finding that NVM's failure to disclose to the retail customers the existence of the Michigan junking certificates constitutes a violation of sec. Trans 139.04(6)1, Wis. Adm. Code. The basis for this finding is adequately set forth in the Proposed Decision. The other objection raised is to the finding that the Department's position in this case was substantially justified. This issue was raised by the petitioners in their posthearing briefs. This finding is supported by substantial, credible evidence in the record. The Proposed Decision is adopted as the final decision in this matter.

APPLICABLE LAW

Section 218.01(3)(b), Stats., provides:

> The licensor may without notice deny the application for a license within 60 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Within 30 days after such notice, the applicant may petition the division of hearings and appeals to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness.

Section 340.01, Stats., includes the following definitions:

> (25g) "Junked" means dismantled for parts or scrapped.
>
> (25r) "Junk vehicle" means any of the following:
>
> > (a) A vehicle which is incapable of operation or use upon a highway and which has no resale value except as a source of parts or scrap.
> >
> > (b) A vehicle for which an insurance company has taken possession of or title to if the estimated cost of repairing the vehicle exceeds its fair market value.

Section 342.34(3), Stats., provides:

> No certificate of title may be issued for a junk vehicle or for a vehicle which has been junked or destroyed.

Section 342.34(3m), Stats., provides:

> (3m) In determining whether a vehicle meets the definition of a junk vehicle for purposes of this section or s. 342.15 (1) (a), the department may promulgate rules

specifying the conditions under which a vehicle shall be considered incapable of operation or use upon a highway.

Rulings on Objections

Pursuant to the stipulation of the parties, seven depositions and accompanying exhibits were admitted to the record subject to evidentiary objections raised by the parties. The petitioners filed a list of eight objections. The rulings on these objections are as follows:

1. Objections to the deposition testimony of Tom Rastall:

   a. At Page 20, from Line 25 to Page 22, Line 10 - objection overruled, the testimony at this point relates the substance of a conversation and is not offered for the truth of the matter asserted.

   b. At Page 23, from Line 18 to Page 24, Line 4 - objection overruled, testimony is offered to describe his action not to prove the Pennsylvania application contained false statements.

   c. At Page 25, from Line 14 to Page 26, Line 10 - objection sustained to the extent the testimony is offered to prove the requirements of Pennsylvania law.

   d. To Exhibit 51 of the Rastall deposition referring to conversations with Jim Dunn of the Pennsylvania DOT and the legality of Pennsylvania transactions - objection overruled, note the exhibit summarizes an interview with Eugene Rondon. The only statements regarding the legality of Pennsylvania transactions appears to be a representation from Mr. Rondon that "Pennsylvania allows for junk vehicles to be titled" and that "[P]ennsylvania sent his applications back stating he had to be a Pennsylvania resident to obtain title."

2. Objections to the deposition testimony of Douglas Michael Falk:

   a. At Page 13, from Line 25 to Page 14, Line 4 - objection overruled, the testimony at this point relates the substance of a conversation and is not offered for the truth of the matter asserted.

   b. At Page 25, Lines 17-20 - objection overruled, testimony is in response to a question regarding the reasons for recommending the denial of the application of NVM for a motor vehicle license. It is not offered for the truth of the matter asserted.

3. Objections to the deposition testimony of Douglas Michael Falk:

   a. At Page 30, from Line 22 to Page 31, Line 3

b. At Page 32, from Line 9 to Line 16

c. At Page 32, from Line 20 to Page 33, Line 17

The objections to the above listed testimony are sustained to the extent they contain hearsay statements with respect to the disclosures made to Mr. Richardson and hearsay statements concerning what Officer Gallman would have done if he had known the vehicles had been issued Michigan junking certificates.

4. Objection to Exhibit 28 to the Falk deposition (transcript, page 32).

Objection sustained with respect to the hearsay statements of Officer Gallman.

5. Objection to Exhibits 29 and 30 to the Falk deposition (transcript, page 15).

With respect to Exhibit 29 - a hearsay objection is sustained - limited to the entry dated February 28, 1995.

With respect to Exhibit 30 - a hearsay objection is sustained limited to the entry dated February 17, 1995 regarding obtaining a statement that the consumer "never knew that vehicle previously junked."

6. Objection to Exhibits 37 and 38 to the Falk deposition (transcript, pages 43-44).

Objection to both exhibits are sustained on the grounds that they relate to complaints against NVM which are not cited as a basis for the denial of NVM's license application and occurred after the decision to deny the application was made.

7. Objection to Exhibit 43 to the Falk deposition (transcript, page 50, Exhibit 43 is a March 7, 1995 memorandum from Attorney Kernats to Deputy Secretary Mulcahy).

Objection sustained on the grounds that the witness is not competent to identify the exhibit.

8. Objection to Exhibit 46 to the Falk deposition (transcript, page 55).

Objection sustained on the grounds that it relates to complaints against NVM which are not cited as a basis for the denial of NVM's license application and occurred after the decision to deny the application was made.

Additionally, to the extent that the depositions contain other inadmissible evidence, no finding of fact or conclusion of law in this decision is made on

the basis of any inadmissible evidence. The basis for any finding of fact which is disputed is identified in the decision and no weight has been given to any witness' testimony related to interpretations of the laws of Wisconsin or any other jurisdiction.

Findings of Fact

The Administrator finds:

1. National Vehicle Management, Inc. (NVM) is a Wisconsin corporation owned by Eugene C. and Sue Rondon. Since 1989, NVM has been licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealership and has been principally engaged in the sale of used motor vehicles. NVM's dealership facilities are located at 925 Applegate Road, Madison, Wisconsin.

2. All Star Rent-A-Car, Inc. (All Star) is a Wisconsin corporation owned by Eugene C. and Sue Rondon. All Star is engaged in the motor vehicle rental business and has not held any motor vehicle dealer license in the past. All Star's facilities are also located at 925 Applegate Road, Madison, Wisconsin.

3. Eugene C. Rondon is the president and principal manager of both NVM and All Star

4. The motor vehicle dealer license of NVM expired on November 30, 1994. In November, 1994, prior to the expiration of its dealer license, NVM filed a timely renewal application with the Department.

5. On or about March 25, 1994, All Star made application to the Department for a motor vehicle dealer's license. On June 23, 1994, the Department issued a "correctable denial" letter to All Star. The letter stated that no license would be issued unless All Star met certain conditions set forth by the Department. On December 9, 1994, counsel for All Star sent the Department a letter setting forth All Star's offer to meet the terms of the correctable denial and requesting that All Star's motor vehicle dealer's license application be reinstated.

6. On March 3, 1995, the Department issued a letter to NVM denying its application for renewal of its motor vehicle dealer's license and setting forth its grounds for denial. The Department's reasons for denying NVM's license application as stated in the March 3, 1995, denial letter related to the sale by NVM in December, 1994 of a 1991 Dodge Spirit and a Dodge Caravan. In deciding to deny the application the Department also took into account a prior fifteen day suspension of NVM's license which occurred in February, 1994.

7. On March 15, 1995, the Department issued a letter to All Star withdrawing its June 23, 1994 correctable denial letter and denying All Star's application for a motor vehicle dealer's license for the reasons set forth in its March 3, 1995 denial letter to NVM.

8. On July 26, 1994, Mr. Rondon purchased the 1991 Dodge Spirit, VIN 3B3XA66A9MT575481 and the Dodge Caravan, VIN 2B4FK55337KR112384, (the vehicles referred to in paragraph six) at the Arena Auto Auction in Bolingbrook, Illinois. At the time of the purchase, both vehicles were titled to Chrysler Corporation (Chrysler) on Michigan junking certificates and were assigned to NVM on such certificates.

9. The 1991 Dodge Spirit was a manufacturer buyback vehicle repurchased by Chrysler from its prior owner, J.C. Kilpatrick of Waukesha, Wisconsin, due to mechanical problems encountered by that owner. The 1989 Dodge Caravan was also a manufacturer buyback vehicle repurchased by Chrysler from its prior owner, S.G. August of Downers Grove, Illinois, due to mechanical problems encountered by that owner. Upon repurchase of the vehicles, Chrysler obtained the Michigan junking certificates for the vehicles in order to prevent any further potential warranty costs.

10. The record contains no evidence that, prior to their sale to NVM, either vehicle had ever been involved in any accident or had suffered any collision or other physical damage.

11. In October, 1994 NVM made arrangements with MailBoxes, Etc. of 3863 Union Deposit Road, Harrisburg, Pennsylvania for that company to be its mailing agent in the Pennsylvania. On October 21, 1994, NVM received a facsimile transmission from Pittsburgh Auto Salvage Service, Inc. (PASS) of Gibsonia, Pennsylvania. The facsimile transmission contained information about PASS's salvage vehicle sales.

12. On October 24, 1994, NVM sent eight motor vehicle "Application for Certificate of Salvage" documents to Rebecca Ann Hess of Middletown, Pennsylvania along with a check in the amount of $222.00 for her to act as a messenger service in making such applications to the Pennsylvania Department of Transportation (Pennsylvania DOT).

13. On November 2, 1994, the Pennsylvania DOT issued certificates of salvage titles to NVM for the 1991 Dodge Spirit and the 1989 Dodge Caravan. The remaining six applications for certificates of salvage submitted by NVM were refused by the Pennsylvania DOT and were returned to NVM. The Pennsylvania titles were obtained as part of a plan to sell salvage vehicles in Pennsylvania. After the Pennsylvania DOT refused to issue titles to six of the eight vehicles, Mr. Rondon decided it was not financially worthwhile to transport only two vehicles to Pennsylvania for sale and abandoned his plan. The subject vehicles were ultimately sold at retail in Wisconsin.

14. The 1991 Dodge Spirit was sold to Rick L. Richardson. The motor vehicle purchase contract for this transaction is dated December 6, 1994. The 1989 Dodge Caravan was sold to Terry J. Banks. The motor vehicle purchase contract for this transaction is dated November 23, 1994.

15. Upon the sale of the 1991 Dodge Spirit by NVM, Mr. Richardson was provided with the written disclosures set forth in Exhibit 6. Upon the sale of the 1989 Dodge Caravan by NVM, Mr. Banks was provided with the written disclosures set forth in Exhibit 7. No additional disclosures were made to either customer. Specifically neither customer was informed that the vehicles had been issued Michigan junking certificates. The basis for this finding is set forth in the "Discussion" section below.

16. On November 30, 1994, NVM made applications to the Department for Wisconsin salvage titles for the 1991 Dodge Spirit and the 1989 Dodge Caravan. On November 30, 1994, the Department issued a salvage title for the 1991 Dodge Spirit to NVM. On December 1, 1994, the Department issued a salvage title for the 1989 Dodge Caravan.

17. Around December 1, 1994, NVM took the 1991 Dodge Spirit and the 1989 Dodge Caravan to Auto Transformers, a body shop located in Evansville, Wisconsin and made arrangements through that company to have a salvage vehicle inspection performed on the subject vehicles by an officer of the Evansville Police Department.

18. On December 9, 1994, Officer David K. Gallman of the Evansville Police Department went to Auto Transformers and performed salvage vehicle inspections on the 1991 Dodge Spirit and the 1989 Dodge Caravan. Both vehicles met required standards and were certified by Officer Gallman for retitling purposes. (Officer Gallman was not provided any information concerning the Michigan junking certificates.)

19. Based upon the salvage inspection conducted by Officer Gallman, NVM applied to the Department for titles for the 1991 Dodge Spirit and the 1989 Dodge Caravan and on December 14, 1995 the Department issued new titles to NVM for those vehicles, noting their salvage history as well as their passing Wisconsin inspection. When the Department issued the titles, it did not have any information showing the existence of the Michigan junking certificates.

20. Following the sales of the 1991 Dodge Spirit and the 1989 Dodge Caravan, NVM made application to the Department to transfer title to the vehicles to its customers. The application for the 1991 Dodge Spirit is dated December 9, 1994, and the application for the 1989 Dodge Caravan is dated December 10, 1994. Both applications have a date stamp indicating receipt by the Department on December 19, 1994. The Department refused to issue new titles to NVM's customers for these vehicles and on March 24, 1995 the Department notified NVM by letter stating that no titles would be issued because the vehicles "were previously junked."

21. On December 29, 1994, three investigators from the Department's Dealer Section, Thomas W. Rastall, Douglas Michael Falk, and Phillip J. Alioto, went to NVM's place of business to investigate the transactions by NVM regarding the 1991 Dodge Spirit and the 1989 Dodge Caravan.

22. In February, 1994, NVM entered into a stipulation with the Department for the suspension of its dealer license for a period of fifteen days and for entry of a special order by the Division of Hearings and Appeals.

23. In February, 1994, NVM and Eugene Rondon entered into a stipulation with the Wisconsin Department of Justice for the entry of a judgment of forfeiture and restitution relating, in part, to its business as a licensed motor vehicle dealership and a consent judgment was entered by the Dane County Circuit Court on February 23, 1994.

24. NVM completed its license suspension as provided in its stipulation and the Department does not dispute that NVM and its owner, Mr. Rondon, have complied with the terms of the Consent Judgment regarding forfeitures and restitution.

25. Although the three denials which are the subject of this hearing are reversed, for purposes of sec. 227.485, Stats., the positions taken by the Department in these denials are substantially justified. The determination by employees of the Department that the subject vehicles could not be titled or registered in Wisconsin was based on a written Department policy which was in the process of being promulgated as an administrative rule. The reliance on this policy by the Department was in error but it was reasonable.

Discussion

There is relatively little actually in dispute between the petitioners and the Department. There are two legal issues and two factual issues. The first legal issue is the effect of the Department's failure to deny the applications for motor vehicle dealer licenses within the required sixty days. Statutory time periods may be directory or mandatory. Generally, a statute describing the time within which public officials are required to perform an act is directory, unless the statute denies the exercise of power after such time, or the nature of the act, or statutory language, shows that the time was intended to be a limitation. State v. Perry, 181 Wis. 2d 43, 53, 510 N.W. 2d 722, 725 (Ct.App. 1993).

The four factors relevant to determining whether a statutory time limit is directory or mandatory are: The objectives sought to be accomplished by the statute, the history of the statute, the consequences that would flow from the alternative interpretations, and whether a penalty is imposed for its violation. Id. 53-54, 510 N.W. 2d 726. One of the responsibilities of the Department is to protect consumers from unscrupulous motor vehicle dealers. This is one of the reasons for licensing dealers. Petitioners' argument that the Department's failure to act on license applications within sixty days should result in an automatic approval of a license would undermine this responsibility. Additionally, the statute does not provide a penalty or any repercussions for failing to act within the required sixty days. Based on these factors, the time limit is directory and the Department did not lose the authority to deny the petitioners' applications by having failed to do so within the sixty-day period.

The second legal issue is the effect of a Michigan junking certificate on the ability to title the subject vehicles in Wisconsin. The Department has a policy that any vehicle which has ever been designated as junk at any point in its title history cannot be titled in Wisconsin. Sound public policy reasons exist for the Department's policy; however, the position of the Department is not supported by the statutes or administrative rules in effect at the time the subject title applications were filed.

The retail customers testified at the hearing. Although Mr. Banks had some complaints about performance of the Dodge Caravan that he purchased, clearly both customers were more concerned about their inability to title the vehicles and lawfully operate them on the highway than about NVM's failure to disclose the existence of the Michigan junking certificates. The record contains no evidence that either vehicle possessed any significant mechanical problems at the time the applications for title were filed with the Department.

The record contains no evidence that either vehicle was ever incapable of operation or use upon a highway, dismantled for parts or scrapped, or the cost of repairing either vehicle exceeded that vehicle's fair market value. Neither vehicle has been junked at any time in its history pursuant to the definition of sec. 340.01(25g), Stats., or constitutes a junk vehicle pursuant to the definition at sec. 340.01(25r), Stats.

The Department cites sec. Trans 149.10(3), Wis. Adm. Code, as authority for its refusal to title or register the subject vehicles. Sec. Trans 149.10, Wis. Adm. Code, provides that "[a] vehicle previously titled in another jurisdiction as junked, or a substantially similar term as used in that jurisdiction, may not be titled or registered in Wisconsin." This administrative rule is directly on point; however, it did not become effective until January 1, 1995. As noted in the findings of fact, NVM filed the applications for titles for the subject vehicles in December, 1994.

Sec. Trans 149.10(3), Wis. Adm. code, was intended as a codification of the Department's policy regarding titling and registering motor vehicles which had titled as junked in another jurisdiction; however, this policy exceeds the definitions of "junked" or "junked vehicle" set forth in the statutes. Pursuant to sec. 342.34(3m), Stats., the Department has authority to promulgate rules specifying the conditions under which it will consider a vehicle to be junk; however, it did not exercise this authority until January 1, 1995.[1]

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[1]On this issue sec. Trans 139.04(5)(c), Wis. Adm. Code, is also noteworthy. Sec. Trans 139.04(5)(c), Wis. Adm. Code, provides in relevant part:

> If because of the general condition of a vehicle, it is considered by the dealer licensee to be a junk vehicle at time of sale, the purchase contract shall state "Sold as junk vehicle"; the dealer licensee shall notate the title and forward it to the department. The purchaser shall be advised that the vehicle may subsequently be re-titled and operated only after it has been inspected and approved by a law enforcement officer ...."

This disclosure requirement is inconsistent with the Department's policy related to titling and registering vehicles which have been labelled as "junk." However, it supports the interpretation that prior to the effective date of sec. Trans 149.10(3), Wis. Adm. Code, a motor vehicle which did not meet the statutory definitions of "junk" or

The first factual issue is whether Mr. Rondon was attempting to circumvent Wisconsin laws relating to registration and titling of motor vehicles or to conceal the history of the subject motor vehicles for the purpose of defrauding retail customers by obtaining Pennsylvania salvage titles for the vehicles. Mr. Rondon provided uncontroverted testimony regarding his plans for the subject vehicles. Mr. Rondon testified that he purchased the vehicles at the Arena Auto Auction. At the time he purchased the vehicles they had Michigan junking certificates. He leased a post office box in Pennsylvania so that he would have a Pennsylvania address and contracted with a messenger service to physically take the applications for title to the subject vehicles, along with applications for titles for six other vehicles, to the Pennsylvania DOT.

Mr. Rondon testified that this was part of a plan to market salvage vehicles in Pennsylvania. The Pennsylvania DOT would only issue salvage titles to the two subject vehicles. The Pennsylvania DOT refused to issue titles to the other six vehicles because, according to Mr. Rondon, he only had a bill of sale, not a title certificate, for these vehicles. When he was only able to obtain Pennsylvania salvage titles to two of the vehicles, Mr. Rondon decided not to pursue his plan to sell the salvage vehicles in Pennsylvania. He then sold the two subject vehicles to retail customers in Wisconsin.

To corroborate his testimony, Mr. Rondon offered as exhibits, which were admitted by stipulation of the parties, copies of the other six title applications and a copy of a cashier check made out to the messenger in the amount of $222. This check purportedly was to cover the cost of the messenger services and the title application fees for the Pennsylvania Department of Transportation. There is no other evidence that the applications were actually submitted to the Pennsylvania DOT or the reason the applications were denied.

Although the evidence in the record leaves unanswered questions concerning the sincerity of Mr. Rondon's plan to market salvage vehicles in Pennsylvania, the Department is unable to show that Mr. Rondon obtained the Pennsylvania salvage titles with the intention to circumvent Wisconsin laws or defraud retail customers. Additionally, based on the finding that the subject vehicles were not junk or junked vehicles at the time the applications for titles were filed with the Department and, therefore, eligible for Wisconsin registrations and titles, if Mr. Rondon's efforts to obtain Pennsylvania salvage titles was for the purpose of concealing the existence of Michigan junking certificates, his efforts were unnecessary. For these reasons, I cannot find that Mr. Rondon's efforts to obtain Pennsylvania salvage titles for the subject vehicles was done for the purpose of concealing the title history of the subject vehicles for the purpose of either circumventing Wisconsin registration laws or to defraud retail customers.

The second factual dispute is what employees of NVM disclosed to the retail customers prior to their purchase of the subject motor vehicles. It is not disputed that the customers were told the vehicles had salvage histories and were manufacturer buybacks. It is disputed whether either customer was told the vehicles had Michigan junking certificates in their title history. I find that this fact was not disclosed to the retail customers. Despite the testimony

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"junked vehicle" could be re-titled in Wisconsin despite having been previously titled as junk.

of the salesman, Jerry Lawrence, and Mr. Rondon, that the customers were told that these vehicles had been issued Michigan junking certificates, I find more credible the testimony of the two customers that they were only told that the vehicles had salvage histories and were manufacturer buybacks.

The testimony of Mr. Richardson and Mr. Banks is consistent with the vehicle disclosure labels for the two vehicles. No one at National Vehicle Management checked the "Junked Vehicle" box on the vehicle disclosure labels. Mr. Rondon testified that this was not done because he believed the vehicles were not junk or junked vehicles pursuant to the statutory definitions. Based on Mr. Rondon's testimony regarding his opinions, I find it highly unlikely that Mr. Rondon or any other employee of National Vehicle Management would have informed the retail customers that these vehicles had been issued Michigan junking certificates.

The second ground for the denial of National Vehicle Management's and All Star's applications for motor vehicle dealer licenses is that Mr. Rondon or other employees of National Vehicle Management failed to disclose to the retail customers that subject vehicles had been issued Michigan junking certificates. Sec. Trans 139.04(6)1, Wis. Adm. Code, requires a motor vehicle dealer to disclose whether "a vehicle [has] been previously junked or flood damaged, regardless of the extent of damage." An appropriate disclosure to the customers would, at a minimum, have been to inform the customers of the existence of the Michigan junk certificates as well as Mr. Rondon's opinion that the vehicles were not junk or junked vehicles pursuant to the definition of those terms in Wisconsin. Mr. Rondon or any other employee of National Vehicle Management failed to make the required disclosure. This constitutes a violation of a law relating to the sale of a motor vehicle contrary to sec. 218.01(3)(a)14, Stats.

This is a serious violation and two retail customers have been harmed. They have been harmed by their inability to lawfully operate the subject vehicles on the public highways because of a lack of a Wisconsin title or registration. This harm, although related to the events of this case, is not the direct result of the violation found. This violation, by itself, does not constitute a reasonable basis for denying the applications of NVM and All Star for motor vehicle dealer licenses.

Conclusions of Law

The Administrator concludes:

1. The requirement that the Department of Transportation may deny an application for a motor vehicle dealer license within sixty says is directory not mandatory. The Department does not lose the ability to deny an application after the sixty day period.

2. The subject vehicles are not "junk vehicles" pursuant to the definition at sec. 340.01(25r), Stats., and have not been "junked" pursuant to the definition at sec. 340.01(25g), Stats.

3. The subject vehicles are eligible for Wisconsin titles and registrations pursuant to the statutes and administrative rules in effect at the time the applications for titles were filed with the Department of Transportation.

4. The failure of National Vehicle Management, Inc., employees to disclose the existence of the Michigan junking certificates in the title history of the subject vehicle is a violation of sec. Trans 139.04(6)1, Wis. Adm. Code. This violation; however, does not constitute reasonable grounds for the denial of the applications of National Vehicle Management, Inc., and All Star Rent-A-Car, Inc., for motor vehicle dealer licenses.

5. Pursuant to secs. 218.01(3)(b), 342.26, and 227.43(1)(bg), Stat., the Division of Hearings and Appeals has the authority to issue the following orders.

Orders

The Administrator orders:

1. The denial by the Wisconsin Department of Transportation of the renewal application for a motor vehicle dealer license of National Vehicle Management, Inc., is reversed.

2. The denial by the Wisconsin Department of Transportation of the application for a motor vehicle dealer license of All Star Rent-A-Car, Inc., is reversed.

3. The refusal of the Department of Transportation to issue titles for the subject motor vehicles is reversed and the Department shall issue titles to the vehicles.

Dated at Madison, Wisconsin on January 17, 1996.

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