

S&H AUTO CENTER	§	STATE OF ALABAMA
1161 Old Birmingham Highway		DEPARTMENT OF
REVENUE		
Sylacauga, AL 35150,	§	ADMINISTRATIVE LAW
DIVISION		
	§	DOCKET NOS. MV. 01-1030
Petitioner,		MV. 02-133
	§	
v.	§	
	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER DENYING DEPARTMENT'S  
APPLICATION FOR REHEARING**

This case involves the Department's proposed revocation of certificates of title for five motor vehicles sold to the current owners by S&H Auto Center. The Department revoked the titles because, according to the Department, the subject vehicles were all previously issued salvage titles, were rebuilt by S&H Auto in Alabama, but were not inspected as required by Code of Ala. 1975, §32-8-87(k). A Final Order was entered on June 14, 2002 holding that the titles should not be revoked because the vehicles were not rebuilt in Alabama, and thus not subject to the inspection requirements of §32-8-87(k). The Department timely applied for a rehearing. On rehearing, the Department now also argues that even if the vehicles were not rebuilt in Alabama, the titles should still be revoked because the title applications for the vehicles were not timely submitted and also contained false statements.

As discussed in the Final Order, since at least the mid-1990's, Shane Holmes, the owner of S&H Auto, has purchased vehicles at salvage auctions in Alabama and Georgia on behalf of Sharp Auto. Sharp Auto is a licensed Arkansas motor vehicle rebuilder with a repair facility in Bono, Arkansas. The outstanding salvage titles for the vehicles were initially assigned to S&H Auto.

S&H Auto subsequently sold the vehicles and reassigned the titles to Sharp Auto. Sharp Auto picked up the vehicles at either the salvage sale location or S&H Auto's facility in Sylacauga, Alabama. Sharp Auto then transported the vehicles and repaired them at its facility in Arkansas.

S&H Auto repurchased some of the rebuilt vehicles from Sharp Auto and resold them in Alabama. The five vehicles in issue were all purchased by S&H Auto at salvage auctions, sold to and rebuilt by Sharp Auto in Arkansas, and repurchased by S&H Auto. Sharp Auto delivered the rebuilt vehicles to S&H Auto in Sylacauga shortly after they were repaired. S&H Auto subsequently sold the vehicles to the current owners in due course, except one vehicle was sold to a former employee, Howard Jones, before Sharp Auto ever delivered the repaired vehicle to S&H Auto. Jones testified at the April 30, 2002 hearing in the case that he was present at S&H Auto's facility in Sylacauga when Sharp Auto delivered the vehicle.

S&H Auto prepared title applications for the customers immediately after it sold them the vehicles. However, it was unable to promptly submit the applications to the Department by the close of the next business day, as required by Code of Ala. 1975, §32-8-35(g), because Sharp Auto failed to timely apply for Arkansas titles for the vehicles. The Department requires that the outstanding title for a vehicle must be submitted with a title application.

When Sharp Auto finally obtained Arkansas "previous damage" titles for the rebuilt vehicles, it assigned and delivered the titles to S&H Auto. Holmes completed the assignment sections on the back of the titles by putting the actual dates on which S&H Auto had sold the vehicles to its customers in Alabama. Consequently, because the Arkansas titles were issued after S&H Auto had sold the vehicles, the date of sale by S&H Auto as indicated on the assignment sections pre-dated the Arkansas titles. After completing the assignment section

on each Arkansas title, S&H Auto submitted the assigned Arkansas title to the Department with the customer's title application. The Department processed the application and issued the customer an Alabama title in due course.

Also as discussed in the Final Order, the Department discovered in early 2001 that several Alabama motor vehicle rebuilders were fraudulently "washing" salvage titles through Arkansas for the purpose of avoiding Alabama's salvage motor vehicle inspection laws. Specifically, the Alabama rebuilders were rebuilding salvage vehicles in Alabama, but instead of having the rebuilt vehicles inspected by the Department, as required by §32-8-87(k), they were using an Arkansas post office box to apply for Arkansas titles in the name of a fictitious Arkansas rebuilder. After Arkansas issued a "previous damage" title to the fictitious Arkansas rebuilder, the Arkansas title would be assigned to the Alabama rebuilder. The rebuilder would then assign the title to its Alabama customer and submit the title with the customer's title application to the Department. The Department would then issue an Alabama title for the vehicle.

After discovering the scheme, the Department stopped processing all pending title applications that were accompanied by Arkansas "previous damage" titles. It also began notifying owners that had already been issued Alabama titles based on Arkansas "previous damage" titles that their titles were being revoked because, according to the form letter used by the Department, "it appears that this vehicle was rebuilt in Alabama," but not inspected as required by §32-8-87(k).<sup>1</sup>

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<sup>1</sup>Many of the titled owners were unaware that their title had been improperly washed through Arkansas, and consequently appealed the revocation to the Administrative Law Division. Although those owners were innocent victims, the Administrative Law Division affirmed the Department's revocation of their titles because there was evidence that the vehicles had been rebuilt in Alabama, in which case the inspection provisions of §32-8-87(k) applied. See, *Harper v. State of Alabama*, Mv. 01-677 (Admin. Law Div. 3/1/02), *Horton v. State of*

Five of the pending title applications that the Department stopped processing had been submitted by Holmes on behalf of his customers. Holmes inquired with the Department in early 2001 as to why the applications had not been processed.

Holmes met with various Department officials concerning the five vehicles in mid-2001. He initially told the Department officials at the meeting that the vehicles had all been rebuilt in Arkansas. When the Department still refused to process the applications, Holmes inquired as to how he could get the titles released to his customers. There is a dispute as to exactly what was said at the meeting, but whatever was said, Holmes came to realize that if he signed an affidavit stating that he had repaired the vehicles in Alabama, the Department would inspect and issue titles for the vehicles. Holmes consequently signed an affidavit to that effect, even though he knew it was false. The Department subsequently inspected the vehicles and issued titles to Holmes' customers.

The Department also notified the owners of the vehicles in issue that because it appeared that their vehicles were rebuilt in Alabama, their titles were being revoked as erroneously issued because the vehicles had not been inspected as required by §32-8-87(k). Holmes appealed on behalf of his customers.

The Department argues that the inspection requirements of §32-8-87(k) apply to the subject vehicles because they were rebuilt by the Petitioner in Alabama. As proof that the vehicles were rebuilt in Alabama, the Department points to the fact that Holmes acknowledged in the affidavit he signed in mid-2001 that he had rebuilt five other vehicles in Alabama.

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*Alabama*, Mv. 01-906 (Admin. Law Div. 2/28/02), *Jacobs-El v. State of Alabama*, Mv. 01-725 (Admin. Law Div. 1/28/02), *Dean v. State of Alabama*, Mv. 01-610 (Admin. Law Div. 1/28/02).

As discussed in the Final Order, Holmes concedes that the affidavit was false, and that he should not have signed it. He explained, however, that he was desperate to obtain titles for his customers. I certainly do not condone Holmes' actions, but realize that he signed the affidavit as the only way to get the titles for his customers. In any case, the fact that Holmes signed a false affidavit concerning five other vehicles has no bearing on where the five vehicles in issue were rebuilt.

The Department contends that the Administrative Law Division concluded in the Final Order that Holmes signed the affidavit under duress, and that employees of the Department encouraged him to sign the false affidavit and otherwise submit false information to the Department. The Department further claims that the Administrative Law Division concluded that the Department employees knowingly misrepresented the truth and misled Holmes at the 2001 meeting. That is wrong.

The Department employees that met with Holmes are dedicated, honest individuals. The Administrative Law Division did not state nor intend to imply that the employees made Holmes sign the affidavit under duress, encouraged Holmes to sign a false affidavit, or otherwise knowingly misrepresented the truth or misled Holmes. But whatever was said at the 2001 meeting, Holmes concluded that the only way he could get titles for his customers was to sign the false affidavit, which he did. Holmes is solely responsible for signing the false affidavit, not the Department employees.

The Department argues that the Administrative Law Division has improperly put the burden of proof on the Department to prove that the subject vehicles were rebuilt in Alabama. I disagree. The issue is whether the titles should be revoked pursuant to Code of Ala. 1975, §32-8-49 as fraudulently

procured or erroneously issued. There is no presumption for or against revocation. Rather, the issue must be decided on the facts of the case.

Holmes testified that the vehicles were rebuilt by Sharp Auto in Arkansas. That testimony was corroborated by Howard Jones, who testified that he was present when Sharp Auto returned one of the rebuilt vehicles to the S&H Auto facility in Sylacauga.

The Department failed to offer any evidence contradicting Holmes' testimony concerning where the vehicles were rebuilt, or otherwise proving that the vehicles were rebuilt by Holmes in Alabama, not Sharp Auto in Arkansas. The Administrative Law Division cannot find that the vehicles were rebuilt in Alabama, as claimed by the Department, without any proof of that fact. Department personnel have visited the Sharp Auto location in Arkansas. I assume that if Sharp Auto was not a licensed Arkansas rebuilder with a facility in Arkansas, the Department would have presented those facts to the Administrative Law Division.

The Department also argues that regardless of where the vehicles were rebuilt, the titles should still be revoked because the title applications contained false statements and were not timely submitted by Holmes.

Concerning the alleged false statements on the title applications, as discussed, when Holmes received an Arkansas title from Sharp Auto, he put the actual date he sold the vehicle to his customer on the assignment section. The sale date was in each case before the Arkansas title was issued because Sharp Auto unduly delayed obtaining the Arkansas title. For example, S&H Auto sold a 1992 Ford Festiva to Charlene Spidell on August 3, 2000. The Arkansas title for the vehicle was not issued to Sharp Auto until October 9, 2000. After receiving the assigned Arkansas title from Sharp Auto, Holmes recorded the sale date on the assignment section of the title to be August 3, 2000, which was the correct

sale date. The fact that the Arkansas title was issued after the recorded sale date does not make the information on the title false. Nor does the fact that the vehicle was in Alabama, not Arkansas, when the Arkansas title was issued prove that the vehicle was rebuilt in Alabama.

The Department makes much of the fact that S&H Auto failed to submit the title applications to the Department by the close of the next business day, as required by §32-8-35(g). Holmes concedes that he failed to timely submit the applications. But while his failure to timely submit the title applications is a breach of his duty as a designated agent, it is not sufficient grounds to revoke the otherwise valid titles issued to his customers.<sup>2</sup> The titles were issued to the owners based on a valid Arkansas “previous damage” title that was properly issued to the Arkansas rebuilder, Sharp Auto, and then properly assigned first to S&H Auto, and then to the current titleholders.

I recognize that Holmes signed a false affidavit concerning five other vehicles for the sole purpose of getting titles for his customers. But his sworn testimony in this case was believable.<sup>3</sup> Given the large number of salvage titles that have been improperly washed through Arkansas, it is understandable that the Department would suspect Holmes of doing the same thing, especially given his method of doing business with Sharp Auto. But as stated in the Final Order, at p. 7, “Alabama law does not prohibit the issuance of an Alabama title for a salvage vehicle that is rebuilt in another state, properly titled in accordance with the laws of that state, and then purchased by an Alabama dealer and sold in

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<sup>2</sup>The Department revoked S&H Auto’s designated agent status based on his failure to timely submit the applications. Holmes appealed the revocation, and the case is currently pending before the Administrative Law Division.

<sup>3</sup>Anyone reviewing the case is urged to not only read the transcript, but also Holmes’ response to the Department’s application for rehearing.

Alabama.” The Department may suspect that Holmes rebuilt the vehicles in Alabama, but without any proof of that fact, or proof that the titles in issue were otherwise fraudulently or erroneously issued, the titles should not be revoked.

Finally, the Department asserts that the Administrative Law Division ruled contrary to the law because of a sense of sympathy for Holmes’ customers.

I do sympathize with an innocent vehicle owner that has his or her title revoked because the dealer/rebuilder that sold them the vehicle failed to comply with Alabama’s motor vehicle inspection laws. But having compassion for an innocent titleholder has never caused me to decide an issue contrary to Alabama law. For example, in the cases cited in footnote 1, *infra*, the titleholders were all innocent parties. They did not know that the titles to their vehicles had been improperly washed through Arkansas. Nonetheless,

because there was evidence that the vehicles had been rebuilt in Alabama, not Arkansas, the Administrative Law Division upheld the title revocations because the vehicles had not been inspected as required by §32-8-87(k).

In this case, the evidence is that the vehicles were rebuilt outside of Alabama. The inspection and other requirements of §32-8-87(k) thus do not apply. The Department's application for rehearing is denied.<sup>4</sup> The June 14, 2002 Final Order is affirmed.

This Final Order Denying Department's Application for Rehearing may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered August 21, 2002.

BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: John Breckenridge, Esq.  
M. Shane Holmes  
Terry Lane

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<sup>4</sup>As a final matter, the Department contends in its application for rehearing, at p. 20, that by not revoking the titles, the Administrative Law Division has allowed S&H Auto to circumvent "the requirement that the notation 'Salvage' be placed on the Certificate of Title, and disclosing to the consumer the fact that the vehicle was considered to be a 'Salvage Motor Vehicle.'" However, although the Alabama titles in issue were not submitted into evidence, my understanding is that if a salvage title was previously issued for a vehicle by Alabama or any other state, the Department will include the notation "previous salvage" on any Alabama title subsequently issued for the vehicle, unless a "rebuilt" Alabama title has been issued. Consequently, I presume that the subject titles have the notation "previous salvage" on them, thus notifying the current and any subsequent owners that the vehicles were previously wrecked.