

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



JUN 17 2013

RUBIE KATE BROOKS,

Petitioner,

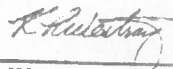
v.

DEPARTMENT OF REVENUE

Respondent.

Docket Number:

OSAH-REV-MVCTA-1337944-60-  
BROWN

  
Kevin Westray, Legal Assistant

FINAL DECISION

I. Introduction

This matter came before the administrative court for a hearing on May 28, 2013 at the Office of State Administrative Hearings (“OSAH”) in Atlanta, Georgia. The issue before the Court is to determine whether the Department of Revenue (“the Department”) erred in issuing certificate of title number 777736122198001. Present at the hearing was Petitioner; A1 Automotive and Collision owner, Keith Hayes; Respondent’s attorney, Mary Jo Volkert, State Law Department; Respondent’s agent, Douglas Hooper; and former vehicle owner, Tisa Baker.

Petitioner requested a hearing to affirm title for a 2004 Chevrolet Cavalier after the Department revoked the title it issued in error. For the reasons set forth below, the Department’s decision to issue said certificate of title of the Chevrolet Cavalier to Tisa Baker is hereby AFFIRMED.

II. Findings of Fact

1.

Ms. Tisa Baker was arrested on April 10, 2012 while driving to work for violation of probation. Her car was retrieved by Bevelyn Jean Mack. (Testimony of Tisa Baker).

2.

While Ms. Baker was incarcerated, Ms. Mack kept the car in her driveway. After some time, she asked her brother, Alfred Mitchell, to tow the car to A1 Automotive and Collision (A1) where he is an employee. (Testimony of Tisa Baker; Testimony of Keith Hayes).

3.

A1, owned and operated by Keith Hayes, stored the car for thirty days after which it began the process of acquiring title of the car as abandoned property to cover its storage costs through a public sale. Mr. Hayes attempted to determine the vehicle history, sending letters to both Ms. Baker and ByRider Finance, lien holder on the car. Ms. Baker’s letter was returned to sender, unclaimed and unable to be forwarded. Mr. Hayes did not receive a response from ByRider. (Testimony of Keith Hayes).

4.

A1 applied for and received title to the vehicle through the Department. On May 4, 2012, A1 issued a bill of sale, transferring ownership of the vehicle to Alfred Mitchell. Title number 605944121580907 was issued to Alfred Mitchell on June 6, 2012 indicating a purchase date of May 4, 2012. Mr. Hayes placed advertisements in the Fulton County Daily report on May 11 and May 18, 2012. (Petitioner Exhibit 2). A1 later received a Magistrate Court Order, dated May 23, 2012, to sell the vehicle by public sale. (Testimony of Keith Hayes; Petitioner Exhibit 2; Respondent Exhibit 1.13-1.15).

5.

Alfred Mitchell then sold the car to Petitioner on May 30, 2012. Title number 777736122198001 was issued to Petitioner on August, 6, 2012 indicating a purchase date of May 30, 2012. (Respondent Exhibit 1.10-1.12).

6.

A public sale would take two weeks to conduct. The storage facility, in this case, A1, is responsible for advertising the vehicle's abandonment once a week for two consecutive weeks in a local paper after which a public sale must be advertised and conducted. A1 did publish in the Fulton County Daily Report a Notice of Abandoned Vehicle on May 11 and 18, 2012. A1's bill of sale indicates that Alfred Mitchell obtained ownership of the vehicle prior to receiving the May 23<sup>rd</sup> Court Order to sell the vehicle by public sale. Additionally, A1's sale to Ms. Brooks took place only seven days after the Court Order was issued with no evidence of a public sale being held. (Testimony of Douglas Hooper and Keith Hayes; Petitioner's Exhibit P-2 and Respondent's Exhibit 1.10-1.12).

7.

Mr. Hayes attempted to re-issue a bill of sale to Petitioner, dated March 20, 2013, in order to resolve the requirements of a public sale. (Respondent Exhibit 4.1).

8.

Petitioner requested a hearing to affirm her title number 777736122198001, issued August 9, 2012, as title of record.

### III. Conclusions of Law

1.

According to O.C.G.A. § 40-3-6, the exclusive remedy for a person aggrieved by an act or omission to act of the Department under the Motor Vehicle Certificate of Title Act is a hearing, upon request, before a board established by the Commissioner to hear such complaints. The Department has delegated the responsibility for adjudicating such cases to the Office of State Administrative Hearings.

2.

According to O.C.G.A. §11-1-201, a public sale means a sale:

- A. Held at a place reasonably available to persons who might desire to attend and submit bids; and
- B. At which those attending shall be given the opportunity to bid on a competitive basis; and
- C. At which the sale, if made, shall be made to the highest and best bidder; and
- D. Except as otherwise provided in this title for advertising or dispensing with the advertising of public sales, of which notice is given by advertisements once a week for two weeks in the newspaper in which the sheriff's advertisements are published in the county where the sale is to be held, and which notice shall state the day and hour, between 10:00 A.M. and 4:00 P.M., and the place of sale and shall briefly identify the goods to be sold.

3.

In this case, Mr. Hayes of A1 Automotive failed to properly dispose of the vehicle by public sale. His issuance of a bill of sale transferring ownership to Alfred Mitchell was dated May 4, 2012, before any advertisements were placed in the Fulton County Daily Report. The Magistrate Court Order was issued on May 23, 2012. The sale of the vehicle to Mr. Mitchell occurred 19 days prior to A1 obtaining permission to sell the vehicle.

Furthermore, there is no evidence that a public sale was ever conducted. Even assuming that Mr. Mitchell was operating as an agent of A1 in this regard, the final advertisement of vehicle abandonment was dated May 18<sup>th</sup>, 2012 with sale of the vehicle to Ms. Brooks dated May 30<sup>th</sup>, 2012. A minimum of 14 days must have elapsed for advertisements of public sale to have circulated. Even had A1 retained title of the vehicle, it is a factual impossibility that a public sale was properly performed, conferring title to Ms. Brooks, and there was no evidence of a public sale presented at the hearing. Therefore, the Department's issuance of title to Alfred Mitchell and subsequent issue to Ms. Brooks were both improper.

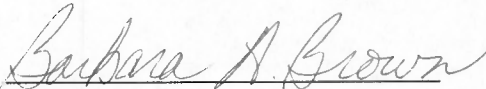
4.

Based upon the evidence presented, the undersigned ALJ concludes that the certificate of title number 777736122198001 was issued as a result of error by the Department. O.C.G.A. § 40-3-41.

#### IV. Decision

The Department was correct in its assessment that the certificate of title number 777736122198001 to Mitchell should be revoked. Respondent is hereby authorized to issue a certificate of title for the vehicle to Ms. Tisa Baker listing ByRider Finance Inc. DBA CNAC as first security interest holder upon receipt of a properly executed title application and the appropriate statutory fee.

SO ORDERED, this 17<sup>th</sup> day of June, 2013.

  
Barbara Brown  
Administrative Law Judge