



INITIAL DECISION

OAL DKT. NO. MVH 03245-18

AGENCY DKT. NO. 02761

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v.

TUNJI S. OLABODE,

Respondent.

Vivek N. Mehta, Deputy Attorney General, for petitioner (Gurbir Grewal, Attorney General of New Jersey, attorney)

Tunji S. Olabode, respondent, pro se

Record Closed: September 10, 2018

Decided: October 24, 2018

BEFORE **DAVID M. FRITCH**, ALJ:

STATEMENT OF THE CASE

The respondent, Tunji Olabode, appeals the suspension of his motor vehicle registration privileges by the petitioner, the New Jersey Motor Vehicle Commission ("MVC"), for a period of 730 days under N.J.S.A. 39:3-37 and 39:5-30 for intentional misstatements of fact which the respondent made on multiple applications to register

motor vehicles. The respondent contends that the misstatements on these applications were innocent mistakes and the matter should be dismissed.

PROCEDURAL HISTORY

By notice dated July 28, 2017, MVC notified the respondent of the proposed suspension and the respondent made a timely request for a hearing. MVC transmitted the matter to the New Jersey Office of Administrative Law ("OAL") where it was filed on February 20, 2018, for determination as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on September 10, 2018, and the record closed on that date.

TESTIMONY AND FACTUAL DISCUSSION

For Petitioner:

Jeffery Streitz is an Investigator II with the MVC Security and Investigations Unit. He has been employed by MVC since 2003 and, prior to working for MVC, was employed in a law enforcement capacity with the New Jersey State Police for twenty-six years. In his current position, he is responsible for investigating fraud relating to motor vehicle titles, registration, and insurance. He was the investigator assigned to the current matter, and he prepared a written report of his investigation and assembled the supporting documents. (See R-12, R-13, and R-14.)

In March 2016, Streitz was investigating motor vehicle registration activity by a company named Auto Access, LLC, a company wholly owned by the respondent. This investigation was initiated as part of ongoing interactions between the respondent and MVC involving his registration of motor vehicles as a dealer engaged in the purchase and sale of motor vehicles without having a valid motor vehicle dealer license. According to Streitz's report, he found 165 vehicles registered to Auto Accents, LLC, between 2009 and 2016. Streitz was familiar with the respondent and knew, from talking to him, that the respondent was in the business of buying salvage vehicles which

he repaired and resold. Streitz told the respondent that he needed to obtain a motor vehicle dealer's license to be in the business of selling motor vehicles, and Streitz suggested two local businesses that could assist him in obtaining a dealer's license and operating a licensed automobile dealership. (P-1.) Streitz had no financial interest in these businesses and offered this information only as an effort to help the respondent get himself established as a licensed motor vehicle dealer.

Streitz found there were sixteen vehicles that the petitioner had applied to register to Auto Accents, LLC between January 4, 2016, and December 8, 2016, utilizing five license plate numbers. (Id.) The registration applications were signed and submitted by the respondent and, under the application language informing the applicant that the vehicle must be covered by liability insurance in the minimum amount required by law with a company authorized to write liability insurance in New Jersey, the respondent listed an insurance company and policy number for each vehicle he was registering. (Id.)

In registration applications the respondent submitted for fifteen of the sixteen vehicles, the respondent reported a GEICO insurance policy as covering the vehicle being registered. Streitz looked at this information and found it suspicious for a number of reasons. Each of the cars registered during this period listed a different insurance policy number. Streitz testified that he found it unusual for a company to have a separate insurance policy number to cover each vehicle with the policy number changing from vehicle to vehicle. Streitz was also familiar with GEICO's policy numbering scheme. He testified that GEICO policies at that time usually started with the numbers four-two, and most of the listed policy numbers submitted by the respondent on his registration applications began with a one, two, or a three which further raised Streitz's suspicions. (Id.)

Streitz attempted to verify these insurance policies with GEICO, and spoke to Michael Shaw, an underwriter with GEICO. Shaw was able to confirm for Streitz that the policy numbers presented on the respondent's motor vehicle registration applications were not valid GEICO policy numbers. He also confirmed that the

respondent did not currently have a GEICO automobile insurance policy and that he had not had an active GEICO policy in 2016 when these vehicle registration applications were being submitted. (R-13.) The respondent previously had a valid GEICO automobile insurance policy, but that policy was cancelled effective August 7, 2015, and he had not had a valid GEICO policy since then. (Id.) Further, the insurance policy that the respondent previously held with GEICO would not have insured the vehicles the respondent was registering because the respondent's GEICO policy was a personal policy and would not accommodate a business as the named insured. (Id.)

Streitz met with the respondent on December 20, 2016, and they discussed these fifteen registration applications. The respondent initially told Streitz that the vehicles were insured with GEICO. When Streitz informed the respondent that he had checked the policies with GEICO, however, the respondent told him that they were insured under a policy with Progressive Insurance. In January, 2017, Streitz met with the respondent again. The respondent presented Streitz with proof of insurance for four of the vehicles through Progressive Insurance, however, that insurance policy was not effective until after the vehicles had already been registered with MVC. For example, one of the insured vehicles under those policies was a 2006 Nissan Titan which was insured under a Progressive Insurance policy effective December 14, 2016, through January 14, 2017. (R-5.) This insurance policy did not provide coverage for the vehicle until nearly a year after the respondent submitted the vehicle's registration application to MVC on January 4, 2016, listing the vehicle as insured under a liability policy with GEICO insurance. (R-14.) The respondent did not present any proof of insurance for these fifteen vehicles that was in effect at the time he submitted registration applications for them with MVC.

The respondent told Streitz that he knew the GEICO policies listed on the registration applications were not valid, but the vehicles in question were not being driven and he only registered them because he needed to have license plates on them so he could park the cars on his lot in Sicklerville, New Jersey. Streitz found that this claim was not supported by MVC's records. For example, Streitz examined the records for a 2002 Honda which the respondent titled and registered to his business, Auto

Accents, LLC, on February 8, 2016. (R-12.) When the vehicle was registered, the respondent reported the vehicle's mileage as 74,678 miles. (Id.) When the vehicle was transferred to a new owner on February 13, 2016, the new owner reported the vehicle's mileage as 75,000 miles—a difference of 322 miles in less than one month. (Id.) Streitz referred the matter to the Gloucester County Prosecutor's Office to review for a possible criminal prosecution based on the misstatements on the registration applications. Streitz believed that criminal charges were brought against the respondent as a result of this referral, but he did not know the resolution of those charges.

Cassandra Berry is an attorney and regulatory officer with MVC. Part of her job is to review misstatement cases and determine if there is adequate evidence of an intentional misstatement to justify referring the case to the OAL. She reviewed the respondent's file and noted that he had registered fifteen vehicles utilizing false insurance policy numbers.

As a result of the motor vehicle registration applications submitted by the respondent between January and December 2016, the respondent was criminally charged with knowingly making a false entry in a public record, in violation of N.J.S.A. 2C:28-7A—a disorderly persons offense. (R-8.) The charge was later amended and downgraded to a municipal court offense of disorderly conduct and the respondent pled guilty to that amended and downgraded charge on August 2, 2017. (Id.)

On July 28, 2017, the respondent was notified that his registration privileges were proposed to be suspended for a period of 730 days for making intentional misstatements on applications for a vehicle registration. (R-3.) The respondent made a written request for a hearing to appeal MVC's decision dated August 23, 2017. (R-4.)

For Respondent:

Tunji Olabode did not testify on his own behalf. The respondent made a written request for a hearing to appeal MVC's decision dated August 23, 2017. (R-4.) In that

request, the respondent asserted that his misstatements on these applications were not intentional. (Id.) He said that, prior to registering these vehicles, he had a GEICO insurance policy that automatically charged premiums to his Chase Bank credit card. (Id.) He discovered that his Chase Bank credit card had been compromised, and he notified the bank to cancel the compromised card and have a new card issued. (Id.) He neglected to update his credit card on file with GEICO to charge premiums to his new credit card, which led to his insurance policy being cancelled for non-payment in 2015. (Id.)

During this period, he had separated from his ex-wife, moved out of his former residence, and did not have regular access to his mail. Because of this, the respondent did not know his GEICO automobile insurance policy had been cancelled. (Id.) He claimed the misstatements on the registration applications were an "honest error and not an intentional offen[s]e." (Id.) The respondent asked the suspension of his registration privileges be dismissed because it was an "honest mistake that could ha[ve] happen[ed] to any good person." (Id.) This assertion was consistent with the narrative the respondent presented through his opening and closing arguments at the hearing.¹

The following facts of this case are not in dispute, and the testimony and documentary evidence submitted reveals the following which I **FIND** as **FACT**:

1. During the relevant time period between January 2016, and December 2016, the respondent was the sole owner of Auto Accents, LLC in Sicklerville, New Jersey.
2. On January 4, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2006 Nissan vehicle utilizing

¹ The respondent also made a claim in his opening and closing arguments that these charges should be dismissed because the investigation into his motor vehicle registration activity was "corrupt" and improperly motivated by a bias of MVC's investigator because he did not take Streitz's suggestion and contact the local business that Streitz suggested to assist him in operating a licensed automobile dealership. (See P-1.) The respondent, however, presented no evidence to support his allegation that Streitz's suggestions to him were motivated by anything other than a desire to assist the respondent in operating his business as a legitimately licensed dealer. The respondent's bare allegation, without more, does not merit further consideration by this tribunal or present a valid defense or justification to the claim that he knowingly presented fraudulent insurance policy information in his applications to register fifteen motor vehicles.

New Jersey license plate E60-DSW at the MVC office in Turnersville, New Jersey. (R-14.)

- a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
 - b. This application listed the vehicle as being insured under a GEICO insurance policy number 3304561706. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.
3. On January 11, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2000 Toyota vehicle utilizing New Jersey license plate F97-EZL at the MVC office in Turnersville, New Jersey. (Id.)
- a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
 - b. This application listed the vehicle as being insured under a GEICO insurance policy number 3039278181. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.
4. On February 8, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2002 Honda vehicle utilizing New Jersey license plate F97-EZL at the MVC office in Salem, New Jersey. (Id.)
- a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
 - b. This application listed the vehicle as being insured under a GEICO insurance policy number 378128160. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the
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respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.

5. On March 3, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2002 Honda vehicle utilizing New Jersey license plate F97-EZL at the MVC office in Turnersville, New Jersey. (Id.)
 - a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
 - b. This application listed the vehicle as being insured under a GEICO insurance policy number 438590013. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.
6. On March 16, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2002 Honda vehicle utilizing New Jersey license plate F97-EZL at the MVC office in Salem, New Jersey. (Id.)
 - a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
 - b. This application listed the vehicle as being insured under a GEICO insurance policy number 4183970012. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.
7. On April 20, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2004 KIA vehicle utilizing New Jersey license plate F97-EZL at the MVC office in Turnersville, New Jersey. (Id.)
 - a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)

- b. This application listed the vehicle as being insured under a GEICO insurance policy number 4370696751. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.
8. On June 17, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2007 Nissan vehicle utilizing New Jersey license plate F97-EZL at the MVC office in Turnersville, New Jersey. (Id.)
 - a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
 - b. This application listed the vehicle as being insured under a GEICO insurance policy number 489679943. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.
9. On July 29, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2006 Mercedes Benz vehicle utilizing New Jersey license plate L54-EKT at the MVC office in Runnemede, New Jersey. (Id.)
 - a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
 - b. This application listed the vehicle as being insured under a GEICO insurance policy number 1024896731. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.
10. On September 6, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2004 Toyota vehicle

utilizing New Jersey license plate F97-EZL at the MVC office in Runnemede, New Jersey. (Id.)

- a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
- b. This application listed the vehicle as being insured under a GEICO insurance policy number 2400781914. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.

11. On September 6, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2007 Saturn vehicle utilizing New Jersey license plate F97-EZL at the MVC office in Turnersville, New Jersey. (Id.)

- a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
- b. This application listed the vehicle as being insured under a GEICO insurance policy number 4783408218. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.

12. On October 31, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2008 Mercury vehicle utilizing New Jersey license plate F97-EZL at the MVC office in Runnemede, New Jersey. (Id.)

- a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
- b. This application listed the vehicle as being insured under a GEICO insurance policy number, however, the policy number is unreadable from the records presented. (Id.) Neither the petitioner nor his

company, Auto Accents, LLC, had a valid GEICO automobile insurance policy at this time.

13. On October 31, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2004 Acura vehicle utilizing New Jersey license plate S47-DNC at the MVC office in Runnemede, New Jersey. (Id.)

- a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
- b. This application listed the vehicle as being insured under a GEICO insurance policy number 28011018481. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.

14. On November 14, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2004 Toyota vehicle utilizing New Jersey license plate F97-EZL at the MVC office in Turnersville, New Jersey. (Id.)

- a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)
- b. This application listed the vehicle as being insured under a GEICO insurance policy number 4270000714. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.

15. On November 16, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 2008 Mercury vehicle utilizing New Jersey license plate F97-EZL at the MVC office in Turnersville, New Jersey. (Id.)

- a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)

b. This application listed the vehicle as being insured under a GEICO insurance policy number 4873004124. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.

16. On December 8, 2016, the respondent filed an application for a New Jersey vehicle registration with MVC to register a 1994 Toyota vehicle utilizing New Jersey license plate F97-EZL at the MVC office in Turnersville, New Jersey. (Id.)

a. This application was signed by the respondent on behalf of Auto Accents, LLC, as the registered owner of the vehicle. (Id.)

b. This application listed the vehicle as being insured under a GEICO insurance policy number 1044817802. (Id.) This policy, as listed on the application, was not a valid GEICO insurance policy held by the respondent or his company, Auto Accents, LLC, and did not provide valid liability insurance for the vehicle being registered.

17. The respondent had a personal automobile insurance policy with GEICO that was cancelled effective August 7, 2015, for non-payment of the premiums. (R-13.) Since the cancellation of this policy, the respondent has not obtained another automobile insurance policy through GEICO.

18. At the time the respondent made these registration applications, between January 4, 2016, and December 8, 2016, neither the respondent, nor his company Auto Accents, LLC, had a valid automobile insurance policy with GEICO insurance. (R-13.)

Assessing the respondent's claim that his presentation of these fictitious policy numbers on these registration applications was an innocent mistake requires a determination of his credibility. Credibility is the value that a finder of the facts gives to a witness' testimony. It requires an overall assessment of the witness' story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The

choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981). In assessing credibility, the interests, motives or bias of a witness are relevant, and a fact-finder is expected to base decisions on credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 844-45 (1973).

The respondent does not contend that the insurance policies he listed on these fifteen vehicle registrations were valid policies held by him or his company to provide the required liability insurance coverage to the vehicles he was registering. He contends that he had a valid GEICO automobile insurance policy, but it was cancelled in 2015 due to non-payment because he neglected to update his credit card information to maintain payments on the policy and he did not know the policy was cancelled by GEICO when he submitted the vehicle registration applications in 2016. Without addressing the fact that the policy he previously held with GEICO was a personal automotive policy and would not have provided coverage to the vehicles he was seeking to register to his business, the respondent attributes these misstatements to an oversight, claiming that his filings were an innocent mistake of his unknowingly relying on a cancelled insurance policy in submitting these vehicle registration applications.

Considering the testimonial and documentary evidence submitted in this matter, the respondent's testimony simply does not "hang together." If, as the respondent claims, he mistakenly relied on his prior GEICO policy in submitting the registration applications believing this former GEICO policy was still valid and would provide coverage for the vehicles being registered, it would be reasonable to expect to see the policy number for that former policy replicated on all fifteen of the registration applications. The documents presented, however, show that the respondent did not simply list the policy number for his now-cancelled GEICO insurance on these fifteen registration applications under the mistaken belief that the policy was still active and would cover the vehicles. Instead, the documentary evidence shows that the respondent listed at least fourteen unique ten-digit policy numbers on these registration applications he submitted to MVC.

Some of these registration applications were even submitted on the same day, but the applications still list markedly different policy numbers for the GEICO insurance policy purporting to cover the registered vehicles. For example, on September 6, 2016, the respondent submitted an application to register a 2007 Saturn vehicle at the Turnersville, New Jersey MVC office. (R-14.) That application reported the vehicle as being insured under GEICO policy number 4783408218. (Id.) That same day, the respondent submitted an application to register a 2004 Toyota vehicle at the Runnemede, New Jersey MVC office. (Id.) That application reported the vehicle as being insured under GEICO policy number 2400781914. (Id.) The documentary evidence on this record directly undercuts the respondent's claim that he was innocently listing an otherwise valid insurance policy that he once held but did not know had been cancelled when he applied to register these vehicles. Accordingly, I **FIND** that the respondent knowingly fabricated fictitious policy numbers for non-existent insurance policies as he completed and submitted each of these fifteen motor vehicle registration applications.

LEGAL DISCUSSION

A person who makes an "intentional misstatement of a material fact in an application for registration of a motor vehicle . . . shall be subject to a fine of not less than \$200 or more than \$500, or imprisonment for not more than six months or both." N.J.S.A. 39:3-37. The Director of MVC "shall, upon proper evidence not limited to a conviction, revoke the registration of the motor vehicle or driver's license of a person who violates this section for a period of not less than six months or more than two years." Id.

Based on the foregoing, I **CONCLUDE** that the respondent offered intentional misstatements of material fact on multiple applications for motor vehicle registrations by knowingly providing fictitious GEICO insurance policy information on each of the fifteen motor vehicle registration applications he submitted to MVC between January 4, 2016, and December 8, 2016 as detailed herein. (See R-14.)

Having found that the respondent made no fewer than fifteen knowing misstatements of material facts in motor vehicle registration applications between January 4, 2016, and December 8, 2016, the only remaining issue is the appropriateness of the penalty proposed by the petitioner. MVC has broad discretion in determining penalties for motor vehicle violations, and each case must be weighed in terms of the circumstances of the offense, the motorist's background and driving history, as well as any aggravating or mitigating circumstances. Cresse v. Parsekian, 81 N.J. Super. 536 (App. Div. 1963), aff'd, 43 N.J. 326 (1964). The function of the MVC is "to impose suspensions for the purpose of reforming the particular motorist and not for the purpose of frightening and deterring others, even though that may be an incidental result." Id. at 549.

The respondent made intentional misstatements on multiple applications in order to register these vehicles despite not having valid insurance coverage for them as required by law. The statute provides for a revocation of registration penalty of between six months and two years for each instance. N.J.S.A. 39:3-37. The respondent's pattern of making material misstatements was repeated on at least fifteen different registration applications, and MVC could have sought a cumulative penalty for each of the fifteen instances. Instead, MVC seeks a penalty which remains within the statutory range for a single violation. Id.

To deviate from the statutorily prescribed penalty, the respondent has the burden to establish good cause to justify the deviation. The essence of good cause is the "ability to afford relief in exceptional situations." Hovland v. Director, Division of Taxation, 204 N.J. Super. 595, 600 (App. Div. 1985).

MVC considers certain factors in calculating an appropriate period of suspension, including "the person's driving record, prior warnings or driver improvement program attendance, maturity and any other aggravating or mitigating factor." N.J.A.C. 13:19-10.2(b). Here, the respondent has a lengthy driving record, including multiple prior suspensions. (R-2.) The respondent also has prior citations for failing to comply

with a court order in 2015 and use of fictitious license plates in 2009. (Id.) Although a two-year suspension is a substantial and lengthy penalty, the respondent made misstatements on multiple applications involving multiple vehicles in a repeated pattern spanning a twelve-month period and presented no credible explanation or justification in mitigation of the serious nature of this repeated pattern of offenses.

CONCLUSION

Accordingly, I **CONCLUDE** that, under the circumstances presented, the Commission's decision to suspend the respondent's motor vehicle registration privileges for a period of 730 days pursuant to N.J.S.A. 39:3-37 is appropriate.

ORDER

It is **ORDERED** that the respondent's motor vehicle registration privileges shall be suspended for a period of 730 days.

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who is by law authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, P.O. Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 24, 2018
DATE



DAVID M. FRITCH, ALJ

Date Received at Agency:

10/24/18

Date Mailed to Parties:

10-25-18

/dw

APPENDIX

LIST OF WITNESSES

For petitioner:

Jeffery Streit, MVC investigator

Cassandra Berry, regulatory officer with MVC

For respondent:

None

LIST OF EXHIBITS

For respondent:

P-1 Undated notes given to respondent by Streit

For petitioner:

R-1 Certification of transmission of file to Tunji Olabode, February 14, 2018

R-2 Certified Driver Abstract for Tunji Olabode, January 30, 2018

R-3 Scheduled Registration Suspension Notice, July 28, 2017

R-4 Hearing request from Tunji Olabode, August 23, 2017

R-5 Progressive Insurance policy cards

R-6 MVC Transaction file record for plate numbers S47DNC, L54EKT, E60DSW, L72HCX, and F97EZL

R-7 License plate history for Tunji Olabode

R-8 NJ Automated Complaint System Narrative Inquiry, Charge Disposition Inquiry, Complaint No. S 2017 000600 0818, October 26, 2017

R-9 Notice of Scheduled Registration Suspension, December 14, 2016

R-10 Cancellation of Scheduled Suspension Notice, July 27, 2017

- R-11 Conference Report, October 5, 2017
- R-12 MVC Incident Report # 1603228, December 9, 2016
- R-13 Letter from Michael Shaw, GEICO, December 13, 2016
- R-14 Applications for Vehicle Registrations
- R-15 Blank MVC Application for Vehicle Registration Form

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: BXXXX XXXXX 05722
OAL DOCKET NUMBER: M.V.H. 10752-18**

IN THE MATTER OF :
ANTOINE M. BARRETT : **FINAL DECISION**

The Motor Vehicle Commission (“Commission”) hereby determines the matter of the proposed administrative suspension of the New Jersey driving privilege of **ANTOINE M. BARRETT**, respondent, for driving during a period of suspension in violation of N.J.S.A. 39:3-40, N.J.S.A. 39:5-30 and N.J.A.C. 13:19-10.8. Pursuant to N.J.A.C. 13:19-10.8, respondent’s New Jersey driving privilege is subject to suspension for a period of 180 days. Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (“ALJ”) and the letter of exceptions filed on behalf of respondent in this matter. Based upon a de novo review of the record presented, I shall accept and adopt in full the ALJ’s findings and conclusions. However, as to the remedial sanction to be imposed based on the totality of the circumstances, including the driver history record, I shall modify the recommendation of the ALJ as indicated below.

In the Initial Decision, the ALJ concluded, after a thorough and careful examination of the testimonial and documentary evidence and a comprehensive analysis of the applicable legal principles, that the Commission met its burden of proof in this proposed administrative suspension action for respondent’s having driven on March 29, 2017 during a valid period of suspension. Initial Decision at 3-4. The ALJ determined that the Commission had properly provided legally sufficient notice to

respondent of the underlying suspension of his driving privileges, at the direction of the Bedminster Township municipal court for his having failed to answer/satisfy an outstanding summons. In arriving at this determination, the ALJ explicitly found that the Notice of Suspension of August 23, 2016, which provided the specific effective suspension date of October 21, 2016 (See Exhibit P-1; Scheduled Suspension Notice, prepared August 23, 2016, coded "SUS S FSFA", and corresponding certification of mailing), was mailed to respondent at his last address of record, as supplied by him to the Commission. A confirming Order of Suspension, dated November 6, 2016 and mailed November 16, 2016, coded "SUS O FSFA", was additionally mailed to respondent at his address of record upon respondent's not having answered/satisfied the court's requirements as of the suspension effective date. Initial Decision at 2. In turning to consideration of the appropriate administrative sanction to impose based on a weighing of the aggravating and mitigating circumstances as detailed in the Initial Decision, the ALJ ultimately recommended a reduced suspension term of forty-five days. Initial Decision at 5-6.

Respondent has filed a letter of exceptions in which he requests leniency asking for a reduced suspension period, also asserting that he will complete a driver's improvement course to further assist with his growth. He notes that the only underlying suspension here for failure to appear in court came after he had initially requested a court hearing on his summons and asserts that he would not intentionally have failed to appear. He nevertheless acknowledges that "what [he] is guilty of is not following up on the request to have a hearing." He again emphasizes that as soon as he learned of the suspension, "it was immediately addressed within 24 hours", as is indicated by the

prompt restoration of privileges on the Certified Abstract of Driver History Record, after the subsequent municipal court matter (under event date April 3, 2017) in which his court driving-while-suspended charge was amended to a N.J.S.A. 39:3-40(i) conviction¹ for which there is no court suspension imposed. He reasserts, as he did previously at the administrative plenary hearing, the hardships that he states will occur from a lengthy suspension period, indicating, among other things: loss of employment, extreme financial hardship, interference with his mother's healthcare/frequent doctor's appointments and religious obligations and his current enrollment in an Electrician program. Respondent also again stresses that he had not had any suspensions in the prior ten years before this court "FSFA" suspension for failing to answer/satisfy the summons after he had submitted his request to plead not guilty and have a court hearing.

Evaluating this record on a de novo basis to determine the appropriate remedial sanction that should be imposed in this matter, I must balance respondent's need for his driving privileges against the public's interest in ensuring public safety on its roadways. In reviewing the totality of the circumstances of this matter including respondent's overall driving record and the mitigating factors present, I conclude that the proposed suspension term shall be reduced from the 180-day term proposed, but that there is still

¹ A conviction under the subparagraph (i), namely under N.J.S.A. 39:3-40(i), is denoted with a short "event description" of "driving while suspended prk ticket" on the Abstract, although it is not necessarily involving parking ticket payments, as it was not here. This is a correction to the ALJ's misunderstanding of this particular subsequent "event description" entry on the Abstract, which correction does not affect any of the ultimate analysis herein.

a need for a significant period of suspension for the purposes of reforming this respondent's behavior.

The ALJ very aptly described in his Initial Decision the most significant aggravating factor in this matter: that respondent's "reckless disregard of the summons . . . should not be overlooked [because of] his assertion, although largely unrefuted, that he didn't 'know' he was suspended." The ALJ noted that with respondent's having had prior traffic summonses for which he had previously had "failures to answer/appear" (although these were from the 1990's) he must fairly be viewed as "acutely aware that he had to return to court in Bedminster after having pled not guilty to the charge." I concur with the ALJ's assessment concerning this disregard of the traffic summons and court process which respondent initiated, and consider this to warrant a period of suspension that will serve to remind the respondent of his obligations arising from the motor vehicle laws of this State.

As for the mitigating factors in the particular circumstances of this case, I note that respondent: has not committed any traffic violations for a period of more than twenty (20) months and has not committed a point-carrying violation for more than ten (10) years; in over 28 years of driving history, has never had a points regulation suspension, has never had a persistent violator suspension, currently has zero (0) accumulated points on his driving record and has had zero (0) points on his record for the past nine years (with his cumulative point-total never having reached higher than six (6) points), has not had any suspensions imposed prior to the subject underlying one for a period of more than ten (10) years, (while noting that he did have multiple driving-while-suspended court and administrative suspensions which all were more than

twenty-one years ago, at the ages of 24, 22, 19 and 18 years of age), that the triggering subject matter here was an accident for which he did not receive any summons, and that he did promptly resolve and get his privileges restored within one day of having the subsequent police summons issued to him.

Despite the mitigation noted, it remains that driving while suspended is a serious matter – respondent should not have been driving on March 29, 2017, when he had not taken the appropriate steps to keep his driving privileges in good standing; he may not recklessly disregard his obligation to follow through as to his court summons and then fail to heed the Commission’s scheduled suspension notice without sanction on this record. Consequently, in my judgment, based on a de novo review of the record, this driver’s behavior is in need of reform and a period of suspension is needed to reinforce his need to comply with the governing motor vehicle laws and regulations, as well as court and Commission notices/orders.

While I am sympathetic regarding the hardship that respondent may suffer as a result of his New Jersey driving privilege being suspended, respondent must nevertheless appreciate the responsibility that he owes to the public under the motor vehicle laws. Motor vehicle license suspensions are primarily intended to protect the safety of the public by temporarily removing offenders from the highways of New Jersey. David v. Strelecki, 51 N.J. 563, 566 (1968); Cresse v. Parsekian, 43 N.J. 326, 328-29 (1964). Moreover, respondent is reminded that the operation of a motor vehicle on New Jersey roads is a privilege, not a right. State v. Nunez, 139 N.J. Super. 28, 30 (Law Div. 1976); State v. Kabayama, 94 N.J. Super. 78, 82-83 (Law Div.), aff’d, 98 N.J. Super. 85 (App. Div. 1967), aff’d, 52 N.J. 507 (1968). A period of suspension of twenty-

five (25) days is both warranted and reasonable in the present case when public safety is balanced against respondent's need to maintain his driving privilege. The Commission notes that respondent's suspension is intended to be rehabilitative rather than punitive in nature. Accordingly, the ALJ's recommended sanction is modified.

It is, therefore, on this 28th day of December, 2018, **ORDERED** that the New Jersey driving privilege of **ANTOINE M. BARRETT** be suspended for a period of twenty-five (25) days for driving during a period of suspension. **NOTE:** The **effective date** of this suspension is set forth in the "Order of Suspension" which the Commission has included in this mailing.



B. Sue Fulton
Chair and Chief Administrator

BSF/kw

Enclosure: Order of Suspension

Mailed to: 29-1 Angela Lane, Paterson, NJ 07502 (per "exceptions" letter)

and: 91-95 Belmont Towers 4B, Paterson, NJ 07522

FINAL DECISION
CONSOLIDATED

MOTOR VEHICLE COMMISSION,
Petitioner,

v.

LARRY'S PROFESSIONAL SERVICE CENTER,
Respondent.

OAL DKT. NO. MVH 09497-17

AGENCY DKT. NO. 009248

MOTOR VEHICLE COMMISSION,
Petitioner,

v.

LARRY WILLIAMS,
Respondent.

OAL DKT. NO. MVH 10703-17

AGENCY DKT. NO. INL 002171

The Motor Vehicle Commission (MVC or Commission) hereby determines the matter of the proposed fines and revocation of the New Jersey motor vehicle emission inspector licenses of **LARRY'S PROFESSIONAL SERVICE CENTER** (the Facility) and **LARRY WILLIAMS**, respondents, on the charge of violating the laws governing motor vehicle inspections, pursuant to N.J.S.A. 39:8-1 to -91, and the licensing rules for private inspection facilities, pursuant to N.J.A.C. 13:20-44.1 to -44.26, and emission inspectors, pursuant to N.J.A.C. 13:20-43.1 to -43.30. The Commission proposed fines totaling \$126,000 for the Facility and \$42,000 for Williams, and permanent revocation of respondents' New Jersey emission inspector licenses.

Prior to issuing this final agency determination, I reviewed and considered the Initial Decision of the Administrative Law Judge (ALJ) and the letter of exceptions to the Initial Decision, which was filed with the Commission by counsel for petitioner. Based upon a de novo review of the record presented, I shall accept and adopt the factual

findings and legal conclusions contained in the Initial Decision insofar as they relate to all but the penalty phase. For the reasons stated herein, I am imposing the penalties proposed by the Commission.

In the Initial Decision, the ALJ concluded, after a thorough and careful examination of the evidence and a comprehensive analysis of the applicable legal principles, that the Commission met its burden of proof regarding the charge of respondents' intentional or willful passing motor vehicles that should have failed emission testing, and fraudulently affixing a certificate of approval to those vehicles. Initial Decision at 44 – 45. In consideration of the facts set forth in the record, the ALJ ultimately concluded that “a penalty of \$31,500 shall be imposed upon the Facility and a penalty of \$21,000 shall be imposed upon Williams.” Id. at 45. Further, the ALJ imposed suspension of the respondents' licenses for two years, in addition to the preliminary suspensions already served. Ibid. The ALJ modified the Commission's proposed penalties, treating the infractions as a first offense. Id. at 44. Twice before, the MVC issued violations against the respondents for fraudulent testing in 2006 and 2012, both of which were settled between the parties. (Joint exhibits J-5; J-8).

Counsel for petitioner filed a letter of exceptions to the ALJ's Initial Decision. The letter contested the ALJ's ruling in the penalty phase that the previous settlements could not be considered as prior violations for calculating the term of suspension and the amount of the fines. Initially, the MVC proposed to treat the instant violations as a second offense in calculating fines but imposed permanent revocation of both respondents' licenses, thereby treating it as a third offense. (T1 136:5-8)¹. The ALJ

¹ Transcript of recorded proceedings (October 11, 2017).

ruled, however, in the Initial Decision that the 2006 and 2012 violations could not be counted due to the settlements' failure to explicitly state that respondents admitted guilt or that the settlement agreements would be considered a prior violation for future cases. Initial Decision at 39 – 44.

The Administrative Code states:

The Chief Administrator shall notify the licensee . . . of any proposed suspension or revocation of the private inspection facility license and the grounds thereof. . . . Unless the licensee files with the Chief Administrator a written request for a hearing in accordance with N.J.A.C. 13:20-44.23, the private inspection facility license shall be suspended or revoked on the date specified in such notice.

[N.J.A.C. 13:20-44.22(b).]

Consequently, if the licensee defaults, the notice of violation becomes the Commission's final decision.

In both the 2006 and 2012 settlement agreements, respondents acknowledged, “[I] . . . **ACCEPT** and understand the settlement offer noted above and waive my rights to an administrative hearing before an Administrative Law Judge.” (Joint exhibits J5; J8, emphasis in originals). Respondents agreed to accept the MVC's findings in those matters in exchange for a less severe penalty.

Therefore, in view of the failure to pursue a challenge to the Commission's notice of violation by requesting a hearing, the allegations become a final decision. In the previous cases, respondents agreed not to challenge the Commission's notice in a formal hearing, thereby making the allegations in the notice of violation a final decision.

As noted in the petitioner's exceptions, reliance on several cases cited in the Initial Decision are misplaced. For example, New Jersey Dep't of Env'tl. Prot. v. Land of Make Believe, 2017 N.J. AGEN LEXIS 1207 (Sept. 8, 2017), included an explicit

agreement that the settlement agreement did not constitute an admission of liability. Id. at *8 – 9.

Moreover, “[n]o contract can be sustained if it is inconsistent with the public interest or detrimental to the common good.” Vasquez v. Glassboro Service Assoc., 83 N.J. 86, 98 (1980). As noted in the Initial Decision at 45, in imposing the penalty, the ALJ considered as an aggravating factor “[t]he respondents’ actions harm the public health and the environment. That they sought to profit from their actions, while simultaneously deceiving their customers, adds to the gravity of the offenses.” Therefore, ignoring the two previous incidents would be injurious to the public well-being, and the penalty should be considered as a third offense.

Further, even if the Commission would follow the recommendation of the ALJ and consider this a first offense, the violations were egregious to the extent that the increased amount of the fines and permanent revocation would still be called for. The Commission has the authority to impose revocation in this instance, where there is fraud or violation of emission inspection. N.J.S.A. 39:8-49; N.J.A.C. 13:20-43.18(a). Respondents were found to have willfully violated the regulations twenty-one separate times, thereby undermining protections impacting the public’s safety, and justifying imposition of a higher penalty.

Accordingly, I hereby determine that respondent violated the laws governing motor vehicle inspections, pursuant to N.J.S.A. 39:8-1 to -91, and the licensing rules for private inspection facilities, pursuant to N.J.A.C. 13:20-44.1 to -44.26, and emission inspectors, pursuant to N.J.A.C. 13:20-43.1 to -43.30. Based on an independent review of the record and evaluation of the aggravating and mitigating factors within the

regulatory and statutory guidelines, I shall impose a fine of \$126,000 for the Facility and \$42,000 for Williams, and permanently revoke respondents' New Jersey emission inspector licenses.

It is, therefore, on this 14th day of December, 2018, **ORDERED** that a fine of \$126,000, and continuation of the preliminary suspension already in effect, resulting in permanent revocation of the emission inspector license shall be imposed on **LARRY'S PROFESSIONAL SERVICE CENTER**, and a fine of \$42,000, and continuation of the preliminary suspension already in effect resulting in revocation of the emission inspector license shall be imposed on **LARRY WILLIAMS**.



B. Sue Fulton
Chair and Chief Administrator

BSF: rdd

cc: Joseph P. Grimes, Esq.
David M. Kahler, DAG