JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2004-09-28-03
ID:	SJ-04-015-K
DATE:	SEPTEMBER 28, 2004
DISPOSITION:	REVOKED
TAX TYPE:	TITLE REGISTRATION
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A request for revocation of Title No. 999999999999C, a transfer title, issued to the Respondent on a 1997 Nissan, Vehicle Identification No. VIN1, was filed by Complainant and was received by the Division on or about May 20, 2004. The complaint was forwarded to the Office of the Administrative Law Judges for further proceedings consistent with the Oklahoma Vehicle License and Registration Act[1], the Uniform Tax Procedure Code[2] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission[3].

On June 25, 2004, a *Notice to Show Cause Why the Application Should Not Be Refused* was forwarded to the parties. The *Notice* scheduled the show cause proceedings for hearing on July 27, 2004.

At the hearing held on July 27, 2004, the Division and Complainant were present. Respondent failed to appear. The matter was stricken and continued for the reason that notice of the hearing had not been sent to the parties by registered mail, in accordance with 47 O.S. 2001, § 1106.

On July 27, 2004, a *Notice to Show Cause Why the Application Should Not Be Refused* was forwarded to the parties in accordance with 47 O.S. 2001, § 1106. The *Notice* scheduled the show cause proceedings for hearing on August 10, 2004.

Neither Complainant nor Respondent were present at the hearing held on August 10, 2004. OTC WITNESS, Administrator-Title (Motor Vehicles and Boats), Motor Vehicle Division, testified regarding the records of the Division. Division's Exhibits A through D were identified, offered and admitted into evidence.

FINDINGS OF FACT

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the undersigned finds:

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[1] 47 O.S. 2001, § 1102 et seq.

[2] 68 O.S. 2001, § 201 et seq.

[3] Rules 710:1-5-20 through 710:1-5-47 of the Oklahoma Administrative Code (*"OAC"*).

1. That on or about April 15, 2003, Certificate of Title No. 999999999999, was issued to AUTO DEALER, Oklahoma City, Oklahoma. The type of title was an "original" title issued upon presentment of an assigned certificate of title from the State of Texas.[4]

2. That on or about April 23, 2003, Certificate of Title No. 999999999999A, was issued to AUTO DEALER 2, Oklahoma City, Oklahoma. The type of title was a "transfer" title issued upon surrender of the assigned "original" title.[5]

3. That on or about March 31, 2004, Certificate of Title No. 999999999999B, was issued to SELLER, Oklahoma City, Oklahoma. The type of title issued was a "transfer" title issued upon presentment of information showing SELLER acquired title to the vehicle pursuant to a Title 42 sale. The Notice of Sale and Return of Sale reports that the vehicle would be and was offered at public sale on January 14, 2004, and actually sold to SELLER on January 14, 2004.[6]

4. That on or about May 5, 2004, Certificate of Title No. 999999999999C, was issued to BUYER, Mustang, Oklahoma. The type of title issued was a "transfer" title issued upon presentment of an *Affidavit for Transfer When Assigned Title is Lost* signed by BUYER as "owner." The *Affidavit* was accompanied by a sales contract dated February 27, 2004, listing SELLER as seller and BUYER as buyer. Both the *Affidavit* and the sales contract were notarized; however, the sales contract did not identify the vehicle by year or vehicle identification number.[7]

5 The revocation request filed by Complainant recites that "Title was changed without legal process - - I did not give Bill of Sale with V.I.N., only a receipt showing money still owed - - With a receipt not notarized."[8]

6. That it is the Division's position that the "C" title should not have been issued for the reason that the sales contract presented as supporting documentation for the *Affidavit for Transfer* did not properly identify the vehicle sold.[9]

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. That jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 47 O.S. 2001, § 1106 and 68 O.S. 2001, § 212.

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[4] Division's Exhibit A.

[5] Division's Exhibit B.

[6] Division's Exhibit C.

[7] Division's Exhibit D.

[8] Official notice is taken of the revocation request.

[9] Testimony of OTC WITNESS.

2. That the Oklahoma Vehicle and Registration Act, 47 O.S. 1991, § 1101 ***et seq.***, was not enacted for the purpose of determining the ownership of a vehicle for which a license is to be obtained. ***Lepley v. State of Oklahoma***, 69 Ok. Cr. 379, 103 P.2d 568 (1940).

3. That the revocation of a certificate of title is not a positive determination of ownership of title to the vehicle. ***Id.***

4. That the Tax Commission is merely a custodian of the records required to file and index certificates of title so that "at all times it is possible to trace title to the vehicle designated." 47 O.S. 1991, § 1107.

5. That the Tax Commission upon determination that an Applicant is not entitled to register and title a vehicle may at any time refuse to issue or revoke the registration and certificate of title. 47 O.S. 1991, § 1106.

6. That a *"Transfer Affidavit"* is acceptable only when accompanied by supporting documentation, *OAC*, Rule 710:60-5-94(b)[10]; and that in this cause, the sales contract did not specifically identify the vehicle sold. Further, the sales contract dated Febraury 27, 2004 recites "car is taken now & title to be traded for final payment" and shows a receipt of the down payment.

7. That based on the facts presented, the "C" title was erroneously issued.

DISPOSITION

Therefore, it is ORDERED that Registration and Certificate of Title No. 999999999C issued to Respondent, BUYER on the 1997 Nissan, Vehicle Identification No. VIN1, be revoked.

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CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.

[10] This rule provides:

> **Supporting documentation required.** The Transfer Affidavit (OTC Form 777) is acceptable when accompanied by supporting documentation, such as a notarized Bill of Sale, canceled check, Sales Contract or notarized statement of a witness to the transaction.