NON-PRECEDENTIAL DECISION OKLAHOMA TAX COMMISSION

JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-02-03-03
ID:	SJ-04-018-K
DATE:	FEBRUARY 3, 2005
DISPOSITION:	REVOKED
TAX TYPE:	TITLE REVOCATION
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A request dated October 14, 2004, for revocation of Title No. ##########F, a "repo" title, issued to Respondent on a 1999 Dodge, Vehicle Identification No. VIN#, was filed by Complainant with the Division. 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 November 10, 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 December 2, 2004.

Both Complainant and the Division were present at the hearing held on December 2, 2004. Respondent neither responded to the Notice nor appeared at the hearing. The Division's Exhibits A-1 through C-8 and Complainant's Exhibit 1 were identified 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:

1. That on or about August 31, 2001, Certificate of Title No. ##########D was issued to FIRST OWNERS, Norman, Oklahoma, listing LOAN COMPANY as lien holder. The type of title was a "transfer" title issued upon presentment of the assigned "C" title, a lien entry form, an odometer disclosure statement, and a copy of a sales contract dated July 24, 2001.[4]

2. That on or about January 15, 2004, Certificate of Title No. ##########E was issued to SECOND OWNER, Oklahoma City, Oklahoma, listing LOAN COMPANY as lien holder. The type of title was a "transfer" title issued upon presentment of information showing SECOND OWNER acquired title to the vehicle pursuant to a Title 42 sale. The Notice of Sale and Return of

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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"*).

[4] Division's Exhibits A-1 through A-7.

Sale reports that the vehicle would be and was offered at public sale on September 18, 2003, and actually sold to SECOND OWNER on September 18, 2003. The document entitled "Title Consultant - Special Instructions" showed the notation "Release Lien" on the form.[5]

3. That on or about April 27, 2004, Certificate of Title No. ##########F, was issued to LOAN COMPANY, Philadelphia, Pennsylvania, on the vehicle in question. The type of title was a "repo" title issued upon presentment of an Oklahoma Tax Commission Repossession Affidavit and supporting documentation. The affidavit was notarized on April 23, 2004, and stated the vehicle was being repossessed from FIRST OWNERS of Norman, Oklahoma, for failure to abide by the terms of the conditional sales contract. The affidavit further stated the date of possession of the vehicle was March 1, 2004.[6]

4. The revocation request filed by Complainant recites that "When the tag agent transferred title for me on January 15, 2004, they did not release the lien." The Division's memorandum dated November 5, 2004, which transmitted the revocation request to the Office of the Administrative Law Judges, states that an error was made at the time of the transfer of title to Complainant as Agent ###1 neglected to release the lien in the name of Wells Fargo Financial Acceptance. The memorandum further states that the lien was still active at the time of the application for the "repo" title and, therefore, Agent ###2 would not have known that a repossession title was not to be issued.

5. That Protestant testified that he purchased the vehicle on September 18, 2003, and has had possession since that time. He further stated that he could not now get a plate for the vehicle due to the issuance of the "F" title.

6. That SUPERVISOR, Supervisor of Titles (Lien/Corrections) for the Division, testified that the lien should have been released as a result of the Title 42 sale, but had been overlooked by the tag agent. She further testified that the "F" title should not have been issued.

7. That ADMINISTRATOR, Administrator-Title (Motor Vehicles and Boats) for the Division stated that a "stop flag" had been placed on the vehicle due to the dispute in this matter. She further stated that Complainant had not been able to drive the vehicle because the vehicle could not be tagged while under a "stop flag."

8. That at the hearing held December 2, 2004, the Court announced that, based on the evidence presented, the "repo" title should not have been issued to Respondent. The Court directed the Division to lift the "stop flag" only long enough to allow Complainant to purchase his tag and then to immediately place the "stop flag" back on the Division's record for this vehicle until such time that the Commission issues its order in this matter.

CONCLUSIONS OF LAW

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

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[5] Division's Exhibits B-1 through B-10 and Complainant's Exhibit 1.

[6] Division's Exhibits C-1 through C-8.

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.

2 That the Oklahoma Vehicle and Registration Act, 47 O.S. 2001, § 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. 2001, § 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. 2001, § 1106.

6. That based on the facts presented, an error was made in placing the lien holder on the "E" transfer title and that the "F" repo title was issued as a result of a mistake and/or fraud due to Respondent stating in its application that it had taken possession of the vehicle on March 1, 2004, when, in fact, Complainant has had possession since September 18, 2003.

7. That in this cause, based on the facts presented, the "F" repo title should be revoked and the "E" title reissued, showing no lien holder.

DISPOSITION

Therefore, it is ORDERED that Registration and Certificate of Title No. #########F, issued to Respondent, LOAN COMPANY, on the 1999 Dodge, Vehicle Identification No. VIN#, be revoked and the "E" transfer title reissued, showing no lien holder.[7]

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are not 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.