JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-09-08-02
ID:	SJ-05-019-K
DATE:	SEPTEMBER 8, 2005
DISPOSITION:	DENIED
TAX TYPE:	TITLE REVOCATION
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A request for revocation of Title No. 99999999999G issued to Respondent on a 1995 Ford, Vehicle Identification No. XYZ123 was filed with the Division by the Complainant on or about June 17, 2005. The request 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 20, 2005, a *Notice to Show Cause Why the Registration and Certificate of Title Should Not be Revoked* was forwarded to the parties in accordance with 47 O.S. 2001, § 1106. The *Notice* scheduled the show cause proceedings for hearing on July 18, 2005.

After being first duly sworn, COMPLAINANT'S REP and RESPONDENT'S REP gave statements on behalf of Complainant and Respondent, respectively. SUPERVISOR, Supervisor of the Title 42 Section of the Division, testified regarding the records of the Division. Exhibits A through C 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:

1. Respondent applied for and received Title No. 599999999999G to the vehicle in question on December 9, 2004, upon presentment of a Return of Sale (Assignment of Ownership) reporting that TOWING COMPANY in accordance with the notice of sale offered the vehicle in question at public sale on November 20, 2004, and actually sold the vehicle on November 20, 2004 to Respondent for $975.00.

2. The Notice of Sale and Proof of Posting and Mailing for the Title 42 Action shows that TOWING COMPANY notified the purported "Record Owner" of the vehicle, XYZ AUTO DEALER, and "Other Interested Parties", INDIVIDUAL and XYZ AUTO DEALER, of the sale by certified mail, return receipt requested.

[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"*).

3. Upon receiving title to the vehicle, Respondent repaired some damage to the front end and sold it at an auto auction since it could not be sold at retail. Respondent does not know where the vehicle is currently located.

4. Complainant purchased the vehicle in question from XYZ AUTO DEALER and subsequently sold it to BUYER on installment payments. BUYER never titled the vehicle in her name. Complainant, however, had filed its lien entry against the vehicle in question on May 26, 2004, listing BUYER as the debtor.

5. Neither Complainant nor BUYER was notified of the Title 42 action. Complainant lien against the vehicle was extinguished by the Title 42 action.

6. It is the Division's position that the "G" title was erroneously issued for the reason that the current owner and lien holder were not notified of the Title 42 action.

CONCLUSIONS OF LAW

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

1. 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. 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 licensed vehicle, and the issuance or revocation of a certificate of title under the Act by the Commission is not a positive determination of ownership of title to the vehicle. ***Lepley v. State of Oklahoma***, 69 Ok. Cr. 379, 103 P.2d 568 (1940).

3. 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.

4. 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.

5. Here, notwithstanding whether the foreclosure by TOWING COMPANY of its "special lien"[4] on the vehicle in question was invalid[5], and notwithstanding whether Complainant's

[4] See, 42 O.S. 2001, § 91(A)(1). The "special lien" was obtained through the services rendered to the owner of the vehicle through the labor and skill of protecting, towing and storing the vehicle. See, ***Moral Ins. Co. v. Cooksey***, 1955 OK 179, 285 P.2d 223.

[5] See, 42 O.S. 2001, § 91(A)(2) and (3) which generally provide that a "special lien" arising by reason of any services rendered to the owner of personal property may be foreclosed by sale upon notice thereof. The notice in particular shall contain the names of the owner and any other party or parties who may claim any interest in the property and shall be posted in three (3) public places in the county where the property is to be sold, and a copy of the notice shall be mailed to the owner and any other party claiming any interest in said property if known, by

lien against the vehicle was perfected in accordance with 47 O.S. 2001, § 1110(A)(1)[6], as between Complainant and Respondent, a bona fide purchaser for value of the vehicle, who had no notice of Complainant's lien, Respondent obtained good title to the vehicle. See, ***Volvo Commercial Finance LLC v. McClellan***, 2003 OK CIV APP 27, 69 P.3d 274. Accordingly, the application for revocation of Certificate of Title 99999999999G should be and the same is hereby denied.

DISPOSITION

Therefore, it is ORDERED that the application for revocation of Certificate of Title No. 99999999999G issued to Respondent, ABC AUTO DEALER on the 1995 Ford, Vehicle Identification No. XYZ123, be denied.

OKLAHOMA TAX COMMISSION

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.

registered mail on the day of posting. Here, based on the evidence presented it is more probable than not that TOWING COMPANY was unaware of Complainant's lien against the vehicle and therefore, the Title 42 foreclosure action of TOWING COMPANY was not faulty.

[6] This paragraph provides in pertinent part: "a security interest in a vehicle as to which a certificate of title may be properly issued by the Oklahoma Tax Commission shall be perfected only when a lien entry form, and the existing certificate of title, if any, or application for a certificate of title and manufacturer's certificate of origin containing the name and address of the secured party and the date of the security agreement and the required fee are delivered to the Tax Commission or to a motor license agent." Here, there is no reason to believe that Complainant's lien was not perfected in accordance with § 1110(A)(1), however, Complainant's lien never appeared on a Certificate of Title to the vehicle because as far as the records of the Tax Commission show, Complainant's customer, BUYER, did not apply for a title to the vehicle.