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October 2015

Cars of Excellence, Inc. vs. COMMERCE AND INSURANCE

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State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

October 28, 2015

Commissioner Julie Mix McPeak
Tennessee Department of Commerce &
Insurance
Office of Legal Counsel
12th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243-5065

Shilina B. Brown, Esq.
Assistant General Counsel
Tennessee Department of Commerce
& Insurance
Office of Legal Counsel
5th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243-0569

Cars of Excellence, Inc.
ATTN: Legal Advisor
1003 South Bellevue Boulevard
Memphis, TN 38103

RE: In the Matter of: Cars of Excellence, Inc.

Docket No. 12.17-132314J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

CARS OF EXCELLENCE, INC.

DOCKET NO. 12.17-132314J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **November 12, 2015.**

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472.** PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**STATE OF TENNESSEE
BEFORE THE TENNESSEE MOTOR VEHICLE COMMISSION
IN NASHVILLE, TENNESSEE**

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
COMMERCE & INSURANCE**

Petitioner,

v.

**CARS OF EXCELLENCE, INC.
1003 South Bellevue Boulevard
Memphis, Tennessee 38103**

Respondent.

(MOTOR VEHICLE LICENSE NO. 18415)

**Docket No. 12.17-132314J
Case No. 2014014831
2014021131**

NOTICE OF DEFAULT AND INITIAL ORDER

THIS MATTER came to be heard at 1 p.m. on September 16, 2015, before Administrative Law Judge Joyce Carter-Ball, assigned by the Secretary of State, Administrative Procedures Division, sitting on behalf of the Motor Vehicle Commission (hereinafter "Commission") upon the Notice of Hearing and Charges filed by the Department of Commerce & Insurance (hereinafter "State" or "Department") on July 28, 2015. Shilina B. Brown, Assistant General Counsel for the Tennessee Department of Commerce and Insurance represented the State of Tennessee. Respondent **CARS OF EXCELLENCE**, was not represented at the hearing, nor did someone from the establishment, an attorney or any other parties appear on its behalf. No motion for a continuance had been received from the Respondent. Upon consideration of the testimony of witnesses, exhibits filed in this matter, and upon the entire record, the Court is of the opinion and finds as follows:

PARTIES

1. The Tennessee Department of Commerce and Insurance, (hereinafter "State" or "Department") is the lawful agent through which the Tennessee Motor Vehicle Sales Licenses Act is administered and is authorized to bring this action.

2. Respondent is a licensee of the Tennessee Motor Vehicle Commission, holding motor vehicle dealer license number 18415 and licensed to conduct business at 1003 South Bellevue Boulevard, Memphis, Tennessee 38103.

ORDER OF DEFAULT

3. The Department moved for a default judgment against Respondent for failure to participate in the hearing after due notice. The State introduced proof that reasonable attempts were made to notify the Respondent of the hearing set for September 16, 2015. More specifically, the State provided proof that a true and exact copy of the Notice of Hearing and Charges in this action was sent to Respondent's business address, 1003 South Bellevue Boulevard, Memphis, Tennessee 38103, on July 28, 2015 via United States Certified Mail Return Receipt Request Receipt No. 7014 2870 000 3014 7772. Further, proof was provided showing that the Notice of Hearing and Charges was signed for and received at this address of Respondent and the State received a signed green card on July 31, 2015 reflecting that this item of mail was delivered by the United State Postal Service. It appearing that proper notice was given to the Respondent at the address attributed to Respondent pursuant to TENN. COMP. R. & REGS. 1360-04-01-.06 (3) and that Respondent did fail to appear, the State's Motion for Default is well taken and is hereby **GRANTED** pursuant to Tenn. Code Ann. § 4-5-309 (a).

FINDINGS OF FACT

1. Respondent was issued motor vehicle dealer license number 18415, first effective

on or about February 19, 2013 with expiration on or about January 31, 2017.

2. On or about April 8, 2014, Respondent was notified by the Motor Vehicle Commission that there was no record of proof of insurance in the Respondent's file as required under Rule 0960-1-.15. Respondent was directed to provide proof of insurance to the Motor Vehicle Commission.

3. Respondent did not provide proof of insurance with the Motor Vehicle Commission as directed to do by the Motor Vehicle Commission.

4. On June 18, 2014, a Notice of Violation of was issued to Cars of Excellence in this matter by Motor Vehicle Inspector Debbie Hicks.

5. On June 20, 2014, the Respondent provided proof of insurance to begin on June 20, 2014.

6. During the period of January 11, 2014 through June 19, 2014, the Respondent had no liability insurance pursuant to the Motor Vehicle Commission Rule 0960-1-.15(1) and (2).

7. On or about July 25, 2014, Respondent was again notified by the Motor Vehicle Commission about the requirement to provide insurance information because the Commission received notification that the Respondent's insurance policy as going to cancel on August 4, 2014.

8. Respondent was required to provide a replacement policy to show proof of minimum required insurance coverage as required under TENN. COMP. R. & REGS. 0960-1-.15 and the Respondent failed to provide the required proof of valid insurance.

CONCLUSIONS OF LAW

1. Respondent violated TENN. COMP. R. & REGS. 0960-01-.15, by selling the vehicle by failing to provide proof of insurance to the Motor Vehicle Commission, as described in

paragraph above of the foregoing Findings of Fact, subjecting Respondent to a civil penalty in the maximum amount of \$5,000.00 for each separate violation of a statute, rule or order pertaining to the board, commission or agency, and each day of continued violation constitutes a separate violation, and the assessment of investigatory and hearing costs pursuant to TENN. CODE. ANN. §§ 56-1-308(a), 56-1-311(a), and TENN. COMP. R. & REGS. § 0780-5-11-.01(1).

2. Respondent violated TENN. COMP. R. & REGS. 0960-01-.15, for failing to provide proof of insurance to the Motor Vehicle Commission for the period beginning on August 5, 2014 since the insurance policy was being cancelled by the insurer effective August 4, 2014, as described in paragraph above of the foregoing Findings of Fact, subjecting Respondent to a civil penalty in the maximum amount of \$5,000.00 for each separate violation of a statute, rule or order pertaining to the board, commission or agency, and each day of continued violation constitutes a separate violation, and the assessment of investigatory and hearing costs pursuant to TENN. CODE. ANN. §§ 56-1-308(a), 56-1-311(a), and TENN. COMP. R. & REGS. § 0780-5-11-.01(1).

3. Respondent violated TENN. COMP. R. & REGS. 0960-01-.23, for failing to respond to the Motor Vehicle Commission, as described in paragraph above of the foregoing Findings of Fact, subjecting Respondent to a civil penalty in the maximum amount of \$5,000.00 for each separate violation of a statute, rule or order pertaining to the board, commission or agency, and each day of continued violation constitutes a separate violation, and the assessment of investigatory and hearing costs pursuant to TENN. CODE. ANN. §§ 56-1-308(a), 56-1-311(a), and TENN. COMP. R. & REGS. § 0780-5-11-.01(1).

JUDGMENT

WHEREFORE, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. Assessment of a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000) for violations of cosmetology rules and regulations as evidenced in the above paragraphs of the above Findings of Fact to be paid within the 30 day period of the issuance of the Final Order; and
2. Assessment of investigatory and hearing costs incurred by the State herein and pursuant to TENN. CODE ANN. § 56-1-311(a) (2014) and TENN. COMP. R. & REGS. 0780-5-11-.01(1) (2014).

Respondent is **ORDERED** to pay the total costs.

REVIEW OF INITIAL ORDER

Within fifteen (15) days after the effective date of this Initial Order, any party may petition the Administrative Procedures Division, Office of the Secretary of State for reconsideration of the Initial Order pursuant to Tenn. Code Ann. § 4-5-317. If no action is taken within twenty (20) days of the filing of the petition, it is deemed denied.

Any party may petition the Administrative Procedures Division, Office of the Secretary of State for a stay of this Initial Order within seven (7) days after the effective date of this Initial Order pursuant to Tenn. Code Ann. § 4-5-316.

Any party may file an appeal from this Initial Order directly with the Board of Licensing Contractors within fifteen (15) days after the entry of this Initial Order pursuant to Tenn. Code Ann. § 4-5-315.

This Initial Order shall become a Final Order unless reviewed in accordance with Tenn. Code Ann. § 4-5-315. If this Initial Order is not reviewed in accordance with Tenn. Code Ann. § 4-5-315, it is effective as a Final Order upon the filing of this Initial Order with the Administrative Procedures Division of the Office of the Secretary of State.

Any party may seek judicial review of the Final Order by filing a petition for review in Chancery Court having jurisdiction within sixty (60) days after the effective date of the Final Order. A petition for reconsideration does not act to extend this sixty (60) day period; however, if the petition is granted, then this sixty (60) day period commences from the effective date of the Final Order disposing of the petition.

Any petition relative to a review of the Final Order or petition to stay the Judgment of a Final Order is to be filed with the Administrative Procedures Division, Office of the Secretary of State, and the Commissioner of the Tennessee Department of Commerce and Insurance.

This Initial Order entered this 20th day of OCTOBER, 2015


JOYCE CARTER-BALL
ADMINISTRATIVE JUDGE

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.