
Leston v. Div. of Motor Vehicles
Cite as 3 *N.J.A.R.* 111

RUFINO LESTON,
Petitioner,
v.
DIVISION OF MOTOR VEHICLES,
Respondent.

Decided September 11, 1981

Initial Decision

SYNOPSIS

Rufino Leston sought to obtain a license as a motor vehicle dealer. The Chief of the Division of Motor Vehicles' Certificate of Ownership Bureau advised Leston that the Division proposed to deny the application for an indefinite period on the grounds that Leston could not be considered a proper person to hold such a license pursuant to *N.J.S.A.* 39:10-19.

The administrative law judge found that Leston was arrested in September of 1974 on a charge of conspiracy to distribute narcotics but that Leston had fled the United States shortly after his arrest. After his voluntary return to the United States in 1977, Leston pled guilty to the charge of conspiracy and was sentenced to a five-year prison term to be served concurrently with a three-year term for bail jumping. Leston was released on parole in 1980. Since that time, he has operated a car repair and towing service.

Observing that the applicable administrative regulation, *N.J.A.C.* 13:21-15.1 *et seq.* merely requires that an individual be of sufficient good character for licensure, the administrative law judge concluded that Leston did qualify for licensure as a car dealer. The judge determined that Leston was a person with a history of good moral character marred by a single episode of an aberrational nature. In addition, the judge found that his conviction was not in any way related to the motor vehicle industry nor with commercial practice and that licensure would aid Leston in continuing to lead a lawful way of life.

Accordingly, the administrative law judge ordered that upon Leston's completion of parole he be granted a license as a motor vehicle dealer.

Rufino Leston, Pro se

Gary Sarlo, Deputy Attorney General for Respondent (James R. Zazzali, Attorney General of New Jersey, Attorney)

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MASIN, ALJ:

Rufino Leston seeks to obtain a license as a motor vehicle dealer. *N.J.S.A.* 39:10-19 authorizes the Division of Motor Vehicles to license such dealers. The statute permits the Director of the Division to license "any proper person." In this instance, the Chief of the Division's Certificate of Ownership Bureau advised Mr. Leston, in writing, that the Director proposed to deny the application for "an indefinite period" on the grounds that Mr. Leston cannot be considered a proper person to hold such a license. Leston then requested a hearing and the matter was transferred to the Office of Administrative as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

The facts concerning Mr. Leston's past conduct are not in dispute. The essential background to the application, as drawn from undisputed facts, can be summarized as follows:

Rufino Leston came to the United States from Cuba in 1956. He operated a number of small businesses over the years, apparently without any legal difficulties. In or about 1968, he claims to have lent money to one Gabriel Gill. Leston testified that he did not know Gill was using the money to purchase narcotics. At any rate, in 1972-73, Leston became involved with his uncle in a partnership, known as Pepos and Leston Auto Sales, a used car dealership licensed by the Division of Motor Vehicles. That business also operated without legal difficulties, at least on the record before me.

According to a State Police rap sheet, Mr. Leston was arrested on September 12, 1974, on a charge of conspiracy to distribute narcotics. The applicant testified that he fled the United States shortly after the arrest, going to Santo Domingo. He remained there, conducting a business under an assumed name, until voluntarily returning to the United States in 1977. After his return, on September 26, 1977, Leston pled guilty to the charge of conspiracy and was sentenced to five years in federal prison, the sentence to be served concurrently with a three-year sentence for bail jumping. Leston served time in Danbury Federal Prison and was released on parole on June 27, 1980. Parole is scheduled to terminate on November 15, 1981.

After his release from prison, Mr. Leston was employed by E & M Towing in Newark. He then purchased his employer's truck and now operates a repair and towing service on Chestnut Street in Newark. Leston testified that he makes money from this business, but not enough to live on. He has a bank account in the First National Bank in Newark and the business, P & L Towing, has a checking account. Leston sold a gold crown (from a statue) for \$7,000 and borrowed \$5,000 from a friend to obtain financing for his business. He is also anticipating the sale of a home in

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Miami, Florida, which sale should net him \$32,000.

In support of his request for licensure, Mr. Leston presented as a witness Steven J. Blackwell, a United States Probation Officer Assistant, assigned to work with Mr. Leston during his parole, under the supervision of Mr. Leston's parole officer, Rafael C. Valentin. Blackwell testified that he has known Leston for one year and has been assigned as his parole assistant since the beginning of 1981. He visits the applicant at work, weekly or bi-weekly. He described Leston as a hard worker, well on the trail to rehabilitation. Leston shows remorse and does not like jail. He is very inquisitive. He does not appear to be making very much money from the current business.

A letter from Mr. Valentin, also in support of the applicant's position was introduced in evidence. The probation officer notes that "Mr. Leston is in great need of his car dealer's license as this would be conducive [*sic*] to successful rehabilitation."

During the hearing, Mr. Leston's Abstract of Driving Record was introduced into evidence. Further reference will be made to this document below.

The testimony of the Division's sole witness, William Greiss, Assistant Chief of the Certificate of Ownership Bureau, largely reflected the uncontroverted factual data set forth above. Greiss did speak concerning rehabilitation and noted that the Division has no written policy concerning how long one needs to wait in order to establish that one is rehabilitated.

ANALYSIS

The factual evidence in this case is not in dispute. Mr. Leston's involvement in the criminal episode and his flight from the United States, which incidents ultimately led to his incarceration in federal prison, are the crux of the Division's objection. His driving record, while it merits consideration, seems of secondary significance in this matter.

The applicable administrative regulations are contained in *N.J.A.C.* 13:21-15.1 *et seq.* Subsection 2 lays out the qualifications of a "proper person." These are:

1. Be at least 18 years of age and have legal capacity to contract, to be sued and to be liable for all debts;
2. Be of sufficient good character, in the Director's discretion, to warrant consideration as a proper person to be licensed as a dealer. To assist the Director in making this determination, he may consider an applicant's financial responsibility as well as whether or not the applicant has been involved in any illegal activities prior to his applying for license;

3. Not have been convicted of a crime arising out of fraud or misrepresentation in the sale or financing of a motor vehicle;

4. Submit, within ten days after preliminary approval of his application, proof of liability insurance covering all vehicles. . . .

With respect to the qualifications set out in the above quoted regulations, Mr. Leston meets qualification No. 1 and is not yet required to meet No. 4. Further, no contention is made that he has ever been involved in, or convicted of, a violation covered by qualification No. 3. In fact, and of some significance here, no evidence exists of any improper business activities in connection with Mr. Leston's several business endeavors, including his prior licensed car dealership.

The question to be addressed then is whether a person convicted of conspiracy to distribute drugs not in their original container can be said to be "of sufficient good character" to hold a used car dealership license. While the answer to this question can certainly vary depending on the particularized facts of each case, in this matter, I **CONCLUDE** that the answer should be in the affirmative.

Unlike such statutes as the Casino Control Act, *N.J.S.A. 5:12-1 et seq.*, the pertinent sections of the Motor Vehicle Certificate of Ownership Law, *N.J.S.A. 39:10-1 et seq.*, specifically subsection 19, do not contain a listing of specific statutes which, if violated, give rise to automatic denials of licensure. Neither does the act nor do the regulations speak in terms of "crimes of moral turpitude" as being disqualifying convictions. Unlike these more limiting types of statutes and regulations, the present "sufficient good character" standard, on its face, would permit licensure of nearly anyone, subject to an analysis of the specific type of conviction, the facts surrounding it, the possible effects upon the type of business involved, and numerous other possible factors which become relevant to a determination of good character. In essence, a conviction for any offense other than one related to fraud or misrepresentation in the sale or financing of a motor vehicle becomes merely a factor to be evaluated along with all other relevant data in making the determination of whether the applicant has the "sufficient good character." Save for the specific citation of crimes involving fraud or misrepresentation in connection with sale or financing of motor vehicles - a conviction which has a direct relationship to the operations of a car dealership - no other type of conviction is, by regulation, deemed so directly relevant as to warrant specification as a disqualifier. Therefore, one must decide if Mr. Leston's conviction for conspiracy to sell narcotics not in their original package can be said to be sufficiently detrimental to his character so as to require a denial of licensure. On the facts of this case, I cannot make such a finding.

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Rufino Leston has been a resident of the United States for about 25 years. During that time, with the exception of a period in his life during which he became involved in a serious criminal episode, he has done nothing to warrant condemnation. From 1956 through at least 1968, on the record before me, Leston appears to have been an exemplary citizen. His good character during that time cannot be faulted. While there are some entries on his motor vehicle abstract during that period, none of these appear to relate sufficiently to character so as to amount to a disqualifying factor.

From 1968 until his arrest in 1974, Leston continued to operate businesses in the Newark area. Again, there is no evidence that in the operation of any of these enterprises, including his licensed dealership, Leston did anything which would reflect negatively upon his good character. Following his arrest in 1974, he did flee the jurisdiction. One cannot overlook the narcotics conspiracy or the flight. Certainly, these incidents do reflect on Leston's character. It would be too much to assert that Rufino Leston has always been of the highest character. In fact, his criminal conviction proves otherwise. However, since his release from prison, and during his parole period, Leston appears to have begun to move back into the mainstream of society, holding employment and then operating a business without any legal difficulties. I believe that it is fair to characterize Mr. Leston as a person who has a history of good character, marred by a single episode of a hopefully aberrational nature, compounded to a degree by his initial reluctance to face the penalties of that episode, a refusal which presumably led to his flight from the country. However, from the time that he returned voluntarily until the present, Leston appears to have adjusted to his situation, accepted his fate, behaved himself in prison, and continued to behave properly while on parole. I think that the past history of this applicant, when taken as a whole, indicates a basic strain of good character which cannot be disregarded.

The specific nature of the incident which led to Mr. Leston's conviction for conspiracy has not been revealed to me. The Division presented no evidence as to the circumstances surrounding the episode. However, the type of conviction involved is conspiracy to distribute narcotics, an offense which does not, in and of itself, have any direct relationship to the operation of a used car dealership. It is not an offense which involves a fraud or a misrepresentation or a shady financial dealing. It does not involve possession or sale of stolen vehicles. It does not have any consumer protection overtones. While the offense is certainly serious, and while the punishment was no doubt deserved, the nature of the offense does not, at least on the record before me, so taint the total picture so as to require, in and of itself, that Mr. Leston not be licensed.

During the hearing, reference was made on several occasions to Mr. Leston's driving abstract. Although there was reference made to a suspension arising out an insurance problem, Leston apparently now has a valid license. Although he has incurred violations as recently as 1980, I find no basis for denying him the right to engage in the used car business merely because of his less than satisfactory past driving record. Such a penalty seems unduly harsh, particularly when other sanctions can be invoked by the Division of Motor Vehicles when, and if, future events so warrant.

Finally, testimony during the hearing from Mr. Leston revealed that he had on occasion been involved in showing automobiles to prospective buyers. These cars were apparently parked on the property which Leston leased for his towing and repair business and the cars were owned by the owner of the property. Leston would receive some sort of commission for whatever help he gave to the actual seller of the vehicle. Leston was not involved in preparing documents or in the actual financial transactions between the owner and buyer. While the specific details of Leston's involvement in this conduct were somewhat confusing, the Deputy Attorney General argued that the conduct might constitute "birddogging," a practice which may be of questionable legality. Assistant Chief Greiss referred the judge to an alleged Attorney General's Opinion as to the legality of this practice. The judge requested the Deputy Attorney General to supply a copy of this opinion. However, on August 4, 1981, Mr. Sarlo informed the judge that the "opinion" was not a Formal Opinion of the Attorney General, but was, instead, an internal memorandum from another Deputy Attorney General to the former Director of Motor Vehicles. Whatever opinion was expressed in that memorandum was not revealed to the judge and Mr. Sarlo advises that the issue is currently under review again. Mr. Sarlo also felt that he could not reveal the nature of the present discussions or of the prior "opinion." In light of this situation and the statement by Assistant Chief Greiss that there was a "fine line" between legal and illegal activity in this area of "dealing" in automobiles, I cannot, on the basis of the record before me, make a finding that Mr. Leston has engaged in any illegal activity. In the meantime, I have been informed by his probation officer that Mr. Leston has agreed not to continue in any involvement in this area, pending licensure. Therefore, I **FIND** no grounds for denying the license based on any possible "birddogging" activity.

CONCLUSION

Based on my review of the testimony, documentary evidence, and the arguments of the parties, I **FIND** that the petitioner, Rufino Leston, does

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qualify as a proper person for licensure as a car dealer. However, I recognize that he is still on parole and will be until sometime in November 1981. The regulations do not specify any particular period of time, following the expiration of parole, during which one may not receive a license. I feel that in light of the nature of the conviction, its lack of involvement with the industry or commercial practices, and the strong possibility that licensure will aid Mr. Leston in continuing to lead a productive and lawful existence, no legitimate purpose would be served in delaying the licensure beyond the completion of parole. At the same time, I recognize that the Division may justly believe that it should be permitted to wait until receiving certification of completion of parole until it issues a license to the petitioner. Therefore, it is **ORDERED** that Rufino Leston be granted a license as a motor vehicle dealer. It is further **ORDERED** that this license not be issued to the petitioner until the Division of Motor Vehicles has been furnished with a certificate of completion of parole by the United States District Court Probation Office. If, for any reason, the United States District Court refuses to terminate Mr. Leston's parole, then the Division of Motor Vehicles may refuse to grant the license. However, if such refusal occurs, Mr. Leston may request a hearing. It is further **ORDERED** that, until receipt of his license, Mr. Leston refrain from any involvement in the sale of used or new cars, as a "birddog," go-between, or in any other way which involves the payment of any fee or commission.

After reviewing this Initial Decision the
Division of Motor Vehicles on October 27, 1981
issued the following Final Decision:

Having, reviewed the initial decision and all exceptions or replies accepted, I hereby adopt the decision of the administrative law judge in the above captioned case as the final decision.