

In Re: Allen Rosenberg
Cite as 4 *N.J.A.R.* 208

**IN THE MATTER OF
ALLEN ROSENBERG,
TRADING AS EL AND M
AUTO PARTS, INC.**

Decided June 15, 1981

Initial Decision

SYNOPSIS

The Division of Motor Vehicles sought to suspend indefinitely the Motor Vehicle Dealer License, Plates and Registration Certification privileges of Allen Rosenberg, trading as El and M Auto Parts, Inc., for his alleged misrepresentation on his Supplemental Application for Dealer License, pursuant to *N.J.S.A.* 39:10-19 *et seq.*

The administrative law judge found that Rosenberghad falsely denied his criminal record on his Dealership Application Form. The judge noted, however, that Rosenberg's conduct and running of the auto parts business since his release from prison, had been exemplary.

Accordingly, the administrative law judge concluded that a 30-day suspension rather than an indefinite suspension of the Dealer License, was appropriate.

David Jacoby, Esq., on behalf of Allen Rosenberg (Tomar, Parks, Seliger, Simonoff and Adourian, attorney)

Robert M. Jaworski, Deputy Attorney General, on behalf of the Division of Motor Vehicles (James R. Zazzali, Attorney General of New Jersey, attorney)

LAW, ALJ:

This matter concerns the proposed indefinite suspension of the Motor Vehicle Dealer License, Plates and Registration Certification privileges of Allen Rosenberg, trading as "EL and M Auto Parts, Inc.," for an alleged misrepresentation on his Supplemental Application for Dealer License, in violation of and pursuant to *N.J.S.A.* 39:10-19, *et seq.* and *N.J.A.C.* 13:21-15.1 *et seq.*

This matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

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PROCEDURAL HISTORY

The record in this matter shows that on or about January 15, 1979, a Renewal Application for 1979 Motor Vehicle Dealer License was completed for EL and M Auto Parts, Inc., indicating one Stuart Rosenberg as its president and one Rose Rosenberg as the secretary of the corporation. A Renewal Application for 1980, dated January 18, 1980, listed Allen Rosenberg as its president and Rose Rosenberg as secretary. A Supplemental Application for Dealer License dated February 22, 1980 also listed Allen Rosenberg as the corporate president. Included on the two Renewal Applications are, among other things, the questions:

3. Have any of the owners, partners, or officers ever been convicted of a criminal or disorderly persons offense in this or any state?
4. Does your dealership employ any person who has been convicted of a crime arising out of fraud or misrepresentation in the sale or financing of a motor vehicle?

To each of these questions, a checkmark was affixed in response boxes marked "No." The Supplemental Application for Dealer License sets forth, among other things, the question, "Have you ever been convicted of a criminal or disorderly persons offense in this or any other state?" Again, the "No" answer box was checkmarked to this inquiry.

By way of Notice dated September 22, 1980, the Director of the Division of Motor Vehicles proposed to suspend, for an indefinite period, the licensee's Dealer License, Plates and Registration Certificates based on the following grounds:

Misrepresentation on your Supplemental Application for Dealer License in answering the question, 'Have you ever been convicted of a criminal or disorderly persons offense in this or any other state.' Investigation discloses a police record.

The licensee's counsel, by way of a letter dated September 25, 1980, requested an informal prehearing conference at the Division. Subsequently, after an adjourned date, a prehearing conference was held on November 5, 1980. William D. Greiss, Assistant Chief, Certificate of Ownership Bureau, conducted the conference and filed a Conference Report thereto, dated November 5, 1980. Thereafter, the licensee requested a plenary hearing before the Office of Administrative Law and the matter was set down for a hearing for March 20, 1981. The licensee and his counsel appeared, as did Sergeant

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Robert E. Jackson of the New Jersey State Police Highway Patrol Bureau, who was a subpoenaed witness for the Division. Representatives for the Division having failed to appear, the undersigned considered the matter abandoned. Subsequent to correspondence between the Office of Administrative Law and the Division, the matter was rescheduled for hearing on May 21, 1981.

STIPULATION

The parties stipulated, on the record, the licensee's prior criminal record.

TESTIMONY

Warren Scheffer, Chief of the Bureau of Certificate Ownership of the Division, testified, among other things, that upon inspection of the Renewal Application for 1980, it was observed that Allen Rosenberg was listed as president of EL and M Auto Parts rather than Stuart Rosenberg, who was set forth as the president for the 1979 Renewal Application. He stated that when a change in ownership or corporate structure occurs, the new owners of the licensed business are required to complete the Supplemental Application for Dealer License. He testified that, subsequent to the Division's receipt of the licensee's Supplemental Application, a State Police check was requested and completed. The licensee's criminal record was supplied to the Division which, in turn, caused the Division to forward to the licensee its Notice of Proposed Suspension.

The licensee testified on his own behalf and admitted that he had answered "No" to the question which appeared on the Renewal Application for 1980 Motor Vehicle Dealer License which asked, "Does your dealership employ any person who has been convicted of a crime arising out of fraud or misrepresentation in the sale or financing of a motor vehicle?". He testified that he set forth the answer only after he had made inquiry with his then legal counsel, a Pennsylvania attorney, who was aware of the licensee's entire criminal record. The licensee stated that the Pennsylvania attorney had reviewed the relevant statutes (*N.J.S.A.* 39:10-19 and *N.J.S.A.* 39:10-20) and determined that the licensee's criminal convictions did not include convictions "arising out of fraud or misrepresentation in the sale or financing of a motor vehicle. . . ." The licensee was advised by his then counsel that he could, therefore, answer the question with a "No" response. He stated that he sought legal advice prior to completing

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the application because of his criminal record and because he had been the victim of prejudice when seeking employment in the past.

With regard to his association with EL and M Auto Parts, Inc., the licensee testified that his brother, Stuart Rosenberg, began the business in 1974. The licensee stated that in 1975 he was otherwise employed and helped his brother in the business on a volunteer basis without pay. In the latter part of 1976, the licensee quit his other employment and began working with Stuart Rosenberg as a full-time employee. In the summer or fall of 1979, Stuart decided to return to college and the business was then sold and transferred to the licensee in 1980.

The licensee stated that it had been seventeen years since the commission of his last crime and nine years since his release from prison. He acknowledged that he failed to appropriately answer the Supplemental Application for Dealer License, wherein he stated "No" to the question, "Have you ever been convicted of a criminal or disorderly persons offense in this or any other state?"

The record shows that the licensee has lived an exemplary life since his release from prison. He has been commended by Hammonton Township, New Jersey officials for changing the image of the business from that of a junkyard to one of a used auto parts and recycling operation. He has improved the appearance of the business by systematically organizing the used automotive parts into categories and by installing fencing on the perimeter of the property to obstruct the view of the operation from outside the premises. The licensee asserted, and there is nothing in the record to the contrary, that he has conducted the business in an honest, legitimate and forthright manner, with gross receipts in excess of \$500,000 annually.

The licensee testified that he correctly completed the 1981 application, setting forth his prior criminal convictions, and that the Division granted his Dealer License for the 1981 calendar year.

Having carefully considered the entire record in the instant matter, I **FIND** the Procedural History and Stipulation set forth hereinbefore are hereby adopted by reference as Findings of Fact. I further **FIND** that the licensee did, in fact, misrepresent his prior criminal record when he completed the Renewal Applications and the Supplemental Application for Dealer License.

The issue now to be determined is what penalty, if any, is to be imposed upon the licensee for his failure to disclose his prior criminal convictions. The Division seeks an indefinite suspension of the Motor Vehicle Dealer License and requests that such suspension commence

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immediately and continue for the remainder of the 1981 license period. Representatives of the Division contend that the licensee may reapply in January 1982 for a Dealer License for the 1982 calendar year. The Division representatives assert that this matter presents a unique issue with regard to penalty, in as much as there is no precedent, by way of regulation or past practice, to determine a period of time for an indefinite suspension.

The controlling statute for the authorization of a Motor Vehicle Dealer's License is found at *N.J.S.A.* 39:10-19 and it provides as follows:

No person shall engage in the business of buying, selling or dealing in motor vehicles in this State, unless he is authorized to do so under the provisions of this chapter. The director may, upon application in such form as he prescribes, license any proper person as such dealer. No person who has been convicted of a crime, arising out of fraud or misrepresentation in the sale or financing of a motor vehicle, shall be eligible to receive a license and each applicant for a license shall at the time such license is issued have established and maintained, or by said application shall agree to establish and maintain, within 90 days after the issuance thereof, a place of business consisting of a permanent building not less than 1,000 square feet in floor space located in the State of New Jersey to be used principally for the servicing and display of motor vehicles with such equipment installed therein as shall be requisite for the servicing of motor vehicles in such manner as to make them comply with the laws of this State and with any rules and regulations made by the director of motor vehicles governing the equipment, use and operation of motor vehicles within the State. A license fee of \$100.00 shall be paid by an applicant upon his initial application for a license. The director may renew an applicant's license from year to year, upon application for renewal on a form prescribed by the director and accompanied each year by a renewal fee of \$100.00. Every license shall expire on March 31 of each year terminating the period for which it is issued. On and after February 1 of each year the director shall issue licenses for the following yearly period to expire on March 31 of the following year.

The authority of the Director to suspend or revoke a license is set forth at *N.J.S.A.* 39:10-20 as follows:

The director may suspend for a period less than the unexpired term of a license or revoke a license, after hearing, for a violation of any provision of this chapter or upon the final conviction of

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the licensee of a crime, arising out of fraud or misrepresentation in the sale or financing of a motor vehicle, or upon proof of the failure of a licensee to make payment of the amount of any final judgment, rendered by a court of competent jurisdiction against such licensee and founded upon a claim arising out of fraud or misrepresentation in the sale of a motor vehicle, within 90 days after the same is finally entered, or for final conviction of the licensee for violating any provision of chapter 171 of Title 2A or of any supplement thereof (Observance of Sabbath Days). The clerk of the court in which any conviction is rendered, or the court where it has no clerk, shall forward to the director, immediately upon the entry thereof, a certified copy of the conviction or a transcript thereof. The clerk of the court in which any judgment founded upon fraud or misrepresentation is rendered, or the court where it has no clerk, shall forward to the director, immediately after the expiration of the 90 days, a certified copy of the judgment, or a transcript thereof, showing it to have been unsatisfied more than 90 days after it became final. The director shall, before suspending or revoking the license, and at least 10 days prior to the date set for the hearing, notify the holder of the license, in writing, of any charges made, and shall afford him an opportunity to be heard in person or by counsel. The written notice may be served either personally or by registered mail addressed to the last-known address of the licensee. The director may subpoena and bring before him any person in this State, or take testimony by deposition, in the same manner as prescribed by law in judicial proceedings in the courts of this State, and shall also issue and deliver to the dealer such subpoenas as are requested by him. The Appellate Division of the Superior Court shall have power to review, by an appeal in lieu of prerogative writ taken by an aggrieved person, a final determination of the director.

The regulations in support thereof are found at *N.J.A.C.* 13:21-15.4. *N.J.A.C.* 13:21-15.2 provides, in part, as follows:

Proper person

- (a) In order to be considered a proper person, an applicant must:
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

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responsibility as well as whether or not the applicant has been involved in any illegal activities prior to his applying for a license;

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

N.J.A.C. 13:21-15.4 provides:

Grounds for rejection or suspension or revocation of a dealer license

- (a) The Director may deny an application for a license, or revoke or suspend a license after it has been granted for any of the following reasons:
 1. Applicant or licensee is not a proper person as defined above;
 2. Any willful misrepresentation or omission made by an applicant in an application for a dealer license or renewal thereof under the provisions of this rule;

Thus I **FIND** that the licensee was not in violation of the statutes and/or regulations arising out of a conviction of a crime of fraud or misrepresentation in the sale or financing of a motor vehicle, either prior to or subsequent to the period of the corporation's Motor Vehicle Dealer License issued by the Division. *N.J.S.A.* 39:10-20, *N.J.A.C.* 13:21-15.2(a)3. Having found, however, that the licensee misrepresented his prior criminal conviction on his application for a renewal application for a dealer license (*N.J.A.C.* 13:21-15.4(a)2.), a suspension is in order.

Having further researched that statute of this State, this court takes official notice of *N.J.S.A.* 2A:168A-1, *et seq.*, which declares that it is in the public interest to assist rehabilitated convicted offenders to obtain gainful employment. Specifically, *N.J.S.A.* 2A:168A-1 states that:

The Legislature finds and declares that it is in the public interest to assist rehabilitated convicted offenders to obtain gainful employment by the elimination of impediments and restrictions upon their obtaining employment based solely upon the existence of a criminal record.

N.J.S.A. 2A:168A-2 provides:

Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, any State, county or municipal

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department board, officer or agency, hereinafter referred to as "licensing authority," authorized to pass upon the qualifications of any applicant for a license or certificate of authority or qualification to engage in the practice of a profession or business or for admission to an examination to qualify for such a license or certificate may grant an application for a license or certificate or an application for admission to a qualifying examination notwithstanding that the applicant has been convicted of a crime, other than a high misdemeanor, or adjudged a disorderly person, where it shall appear to the licensing authority that the applicant has achieved a degree of rehabilitation which indicates his engaging in the profession or business, for which he is an applicant for license or certificate or admission to a qualifying examination, would not be incompatible with the welfare of society or the aims and objectives of the licensing authority.

Accordingly, I **FIND** and **CONCLUDE** the herein licensee to have achieved a degree of rehabilitation which indicates that his engaging in the business of a used auto parts dealership would not be incompatible with the welfare of society or the aims and objectives of the Division.

The credible testimony of the licensee convinces this court that he is, indeed, a rehabilitated convicted offender and, therefore, a proper person to be licensed as a dealer. The severity of the penalty requested by the Division would close down the licensee's business for a period of six months. Such a period of suspension would, rather, be a revocation of the Dealer License and would virtually put the licensee out of business. Such action is not warranted under the circumstances.

Accordingly, I **CONCLUDE** that the Motor Vehicle Dealer License issued to EL and M Auto Parts, Inc., be and hereby is suspended for thirty days. Such suspension shall commence on midnight December 1, 1981, and shall continue until midnight December 30, 1981.

In all other respects, the licensee's Petition is hereby **DISMISSED**.

After reviewing this Initial Decision, the Division of Motor Vehicles, on July 24, 1981, issued the following Final Decision:

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