

Date of Mailing: September 27, 2024

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION**

NEW JERSEY MOTOR VEHICLE : **CASE NO. 28721**
COMMISSION, : **OAL DKT. NO. MVH 12898-23**

Petitioner, :

v. :

POWER MOTORS, LLC :

Respondent.

AND

NEW JERSEY MOTOR VEHICLE : **CASE NO. 28723**
COMMISSION, : **OAL DKT. NO. MVH 12901-23**

Petitioner, :

v. :

NORTH WARREN AUTO SALES, LLC : **(CONSOLIDATED)**

Respondent.

FINAL DECISION/ORDER

The Motor Vehicle Commission (Commission or petitioner) hereby determines the consolidated matter of the proposed denials of the motor vehicle dealer license applications of Power Motors, LLC (Power Motors or respondent) and North Warren Auto Sales, LLC (North Warren or respondent). Pursuant to N.J.S.A. 39:10-19 and N.J.A.C. 13:21-15.4, respondents' dealer license applications are subject to denial for failure to meet the "established place of business" requirements set forth at N.J.A.C. 13:21-

15.4(d).¹

Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (ALJ) and the letter of exceptions filed on behalf of petitioner; neither respondent filed exceptions nor replies to petitioner's exceptions. Based upon an independent and de novo review of the record presented, I shall modify, in part the findings and reject the conclusions contained in the Initial Decision and shall reject the order and recommendation of the ALJ.

In his Initial Decision, the ALJ made certain findings of fact that were not contested by the parties. Initial Decision at 3-4. The ALJ also made additional findings of fact based on his review of the testimony and evidence presented at the hearing. Initial Decision at 10-11. With respect to the creation of "Suzuki of Washington" (SOW), the ALJ made the following additional factual finding: "Rossi Auto [Rossi Pontiac Buick GMC, Inc.] created SOW so it could conduct an additional business that sold Suzuki automobiles." Additional finding number 17, Initial Decision at 11.

The ALJ recommended an Order for the reversal of the Commission's notices of proposed denials and the issuance of used motor vehicle dealer licenses to respondents, under N.J.A.C. 13:21-15.4(d)(1)(i) "as a location type B at 30 Route 31 South, Washington Township, New Jersey." Initial Decision at 14. The ALJ's recommended order was based on his conclusion that SOW "was a business in operation at the proposed location on or before March 6, 2006," and further concluded that respondents are both therefore exempt from the firewall requirement at N.J.A.C. 13:21-15.4(d)(1). Ibid. While I agree with certain

¹ The notices of proposed denials were based on failure to meet the exterior signage, the display space, and location requirements. The Commission has acknowledged that respondents have since cured the exterior signage and display space deficiencies, leaving the location-related basis as the only remaining basis for the denials of the motor vehicle dealer license applications.

of the ALJ's factual findings, I find it necessary to reject the ALJ's findings, analysis and conclusions that led to that recommended order.

The ALJ's conclusion that respondents have met the requirements for the firewall exemption set forth at N.J.A.C. 13:21-15.4(d)(1)(i) is based on the rationale that a corporation's use of a trade name under the authority of N.J.S.A. 14A:2-2 "allows a business entity such as Rossi Auto to create and conduct other businesses without having to create a new legal entity," and "[h]ere, Rossi created the alternate business identified as SOW, so it could expand its operations to include the sale of Suzuki motor vehicle products." Initial Decision at 13. The ALJ added the observation that "N.J.A.C. 13:21-15.4(d)(1)(i) does not define the term 'other business' and does not require that the 'other business' be owned and or operated by a separate legal entity." Initial Decision at 14. I find it necessary to reject the ALJ's analysis and conclusions that led to his recommendation, for the reasons set forth below.

An applicant for a used motor vehicle dealer license must meet the physical location requirements set forth in the Commission's regulations at N.J.A.C. 13:21-15.4, including the firewall requirement of N.J.A.C. 13:21-15.4(d)(1) if the proposed dealer location is in a building shared with other businesses, unless the applicant meets the criteria for the exemption at N.J.A.C. 13:21-15.4(d)(1)(i)², which states:

For a proposed place of business located in a building housing more than one business, within which there was at least one licensed dealer and one other business prior to March 6, 2006, and where there is a fire suppression system approved by a local building code official or the New Jersey Department of Community Affairs, walls must be either exterior walls or standard walls constructed separately from any other wall. A

² The exemption is in the nature of a "grandfathering" type exception only allowing for multiple businesses in a single building without having the required firewalls if there was at least one licensed dealership and one other business already in that building prior to the March 6, 2006 date when the then-new regulatory requirements took effect.

proposed place of business meeting this criteria must also be certified to meet the requirements stated in this section by a New Jersey-licensed engineer, New Jersey-licensed architect, or municipal code official.

While there is undisputed evidence that Rossi Auto was a licensed dealer located at 30 Route 31 South, in Washington, New Jersey prior to March 6, 2006, the issue is whether SOW qualifies as “one other business” also located at the proposed location.

First, while SOW was operated under the umbrella of Rossi Auto, SOW had no separate legal existence. This relates in part to the ALJ's factual findings. Additional finding number 17, discussed above, has the potential to confuse the ultimate issue, which is a legal one but based on facts. Accordingly, I shall modify this finding of fact and make, instead, the following finding of fact: Pursuant to N.J.S.A. 14A:2-2.1, Rossi Auto did not produce documentation showing that SOW was operated as anything other than under the guise of Rossi Auto's alternate business name, SOW. SOW was never established as a legal entity separate from Rossi Auto.

Second, while New Jersey law permits a corporation to transact business using an alternate name after filing a certificate of registration with the Secretary of State, it is still the filing corporation that is transacting the business and that is using the name; the statute does not provide for the creation of a separate legal entity. Indeed, the legal use of an alternate name does not create anything separate from that corporation. Thus, the ALJ's conclusion that there was an “other” or separate business created by use of an alternate name is incorrect. See N.J.S.A. 14A:2-2.1 and Zucker v. Silverstein, 134 N.J. Super. 39, 48 (App. Div. 1975) (the use of a trade name does not create a separate entity). See also, Beijing Gongmei Imp. & Exp. Co., Ltd. v. Ijbara, 2012 U.S. Dist. LEXIS 109580 (Aug. 6, 2012).

The absence of a specific definition of the term “other business” does not change

this conclusion. Where the Legislature has not provided a definition, the plain meaning of the term must be applied. State v. Gaikwad, 349 N.J. Super. 62, 77-78 (App. Div. 2002), citing State in Interest of M.G., 307 N.J. Super. 348, 354 (App. Div.), certif. denied, 154 N.J. 607 (1998). This principle must necessarily extend to regulations, promulgated under the authority of statute. Here, as in Gaikwad, supra, concerning the meaning of the undefined term “obtain,” the word “other” is not a legal term that must be defined in order for its meaning to be understood. It defies common sense to interpret the phrase “other business” to mean “the same business,” which is, in essence, the result of the ALJ’s conclusion. Rossi Auto traded under the name SOW to sell Suzuki vehicles. However, no separate business entity was ever established for SOW (see Zucker, supra); (it was still Rossi Auto selling the Suzukis). Thus, SOW was one and the same legal entity as Rossi Auto. It cannot legally have been a separate, other, entity. Additionally, if SOW truly were a separate legal entity, then Rossi was operating an unlicensed dealership, whose site location was never approved by the MVC, as argued in the exceptions submitted by the Commission.

Conclusion

Based on the foregoing, I hereby find that there is no evidence that the proposed location, 30 Route 31 South, Washington Township, housed “more than one business, within which there was at least one licensed dealer and one other business prior to March 6, 2006,” as required to benefit from the exemption set forth at N.J.A.C. 13:21-15.4(d)(1)(i). Accordingly, respondents have failed to meet the firewall requirement of N.J.A.C. 13:21-15.4(d).

It is, therefore, on this 27th day of September 2024, **ORDERED** that the applications for used motor vehicle dealer licenses submitted by respondents Power Motors, LLC and

North Warren Auto Sales, LLC, are denied.

A handwritten signature in black ink, appearing to read 'Latrecia Littles-Floyd', written in a cursive style.

Latrecia Littles-Floyd
Acting Chair and Chief Administrator

LLF/kw

cc: Peter Slocum, Esq. (via email and first-class mail)
Jennifer R. Jaremback, DAG (via email and first-class mail)