



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

AFFIRMED
N. J. MOTOR VEHICLE COMMISSION

Date 5-14-18

INITIAL DECISION

OAL DKT NO MVH 17960-17

AGENCY DKT NO RXXXX-XXXX 07892

NEW JERSEY MOTOR VEHICLE COMMISSION,

Petitioner,

v

ELVIS B. RODRIGUEZ,

Respondent

Kenneth Vercammen, Esq., for petitioner, New Jersey Motor Vehicle Commission (Kenneth Vercammen & Associates)

James B. Lisa, Esq. and **B. Dakota Kuykendall, Esq.** for respondent (Law Offices of James B. Lisa; attorneys)

Record Closed March 19, 2018

Decided March 28, 2018

BEFORE KIMBERLY A. MOSS, ALJ

Petitioner, New Jersey Motor Vehicle Commission (MVC or Petitioner) contends that respondent Elvis B. Rodriguez's (Rodriguez) motor vehicle privileges should be suspended because he unsafely changed lanes causing the death of Michael Devenio (Devenio) and George Anton.

By notice dated August 23, 2017, respondent was advised of the scheduled suspension. Respondent contested the suspension and the matter was transmitted to the Office of Administrative Law (OAL) and filed on November 29, 2017. Hearings were held on February 16, 2018, and March 9, 2018. Closing submissions were received on March 19, 2018, on which date the record closed.

FACTUAL DISCUSSION

TESTIMONY

Robert Applegate

Robert Applegate (Applegate) is a police detective with the East Rutherford Police Department. He testified that he was working on October 16, 2016, when he responded to a call of a car crash at 3:19 a.m. He responded to State Highway Three near Met Life Stadium. Applegate recalled that he saw four damaged cars upon his arrival. Rodriguez vehicle was a Toyota Highlander. The first vehicle was attached to the guardrail. It was operated by Naomi Anton. The second vehicle was operated by Devenio who was deceased upon Applegate's arrival. The third vehicle was operated by Rodriguez. George Anton was a passenger in Rodriguez vehicle. He had life threatening injuries as a result of the crash. Vehicle four was also on the guardrail. It was operated by Abdulah Malahi. All parties were transported to the hospital.

Applegate spoke briefly to Rodriguez. He did not ask Rodriguez if he had consumed alcohol that evening. There was an alcohol odor from Rodriguez car. Applegate was present when Rodriguez told a paramedic that he had consumed alcohol that evening, however no standard sobriety tests were done. Applegate did not determine if Rodriguez was impaired.

Applegate did not speak to any witnesses on this case, no field sobriety tests were done and no blood samples were taken. The area of the crash has three lanes of

traffic with no curves or bends. He did not issue any tickets in this matter. Applegate is not an accident reconstruction expert.

Rodriguez was not issued a summons because of the crash. Applegate could not take a statement from Rodriguez at the hospital because his injuries were too severe. A warrant was issued to retrieve Rodriguez's blood five hours after the crash. The test showed no alcohol, or drugs or narcotics in Rodriguez's blood work. Applegate does not know what caused the accident. One of the other drivers was intoxicated.

Applegate is a certified Alco test operator. There is a burn off rate, which is the time it takes for the body to metabolize alcohol. If the blood alcohol rate is .15 the burn off rate is twelve hours. He has investigated two hundred driving while intoxicated cases. In those cases, the average blood alcohol rate is .15.

Elvis Rodriguez

Elvis Rodriguez (Rodriguez) testified on his own behalf. He does not recall the events leading up to the October 16, 2016 accident. He was later told by members of George Anton's family what happened prior to the accident. He does not remember the week of the accident. He was told by George Anton's family that George Anton died in the accident. Rodriguez sustained a head injury. Rodriguez only recalls waking up in the hospital a month after the accident.

FACTUAL DISCUSSION

Based upon the documentary and testimonial evidence presented, and having had an opportunity to observe the demeanor of the witness and assess his credibility I **FIND** the following **FACTS**:

On October 16, 2016, there was a four-car accident on State Highway Three eastbound around milepost 7.7 in East Rutherford, New Jersey. On October 16, 2016 at approximately 3:19 a.m. Applegate responded to the scene. Once at the scene he saw two vehicles attached to the guardrail, one had been operated by Naomi Anton and the other was operated by Abdulah Malachi. The other two vehicles operated by Devenio and Rodriguez were on the side of the road. George Anton was a passenger in Rodriguez's vehicle. Devenio was pronounced dead at the scene of the collision. George Anton died as a result of the accident.

Applegate smelled an odor of alcohol from Rodriguez's car. When he was in the ambulance, Rodriguez told the paramedic that he had consumed alcohol. Rodriguez does not remember the accident or anything that occurred in the week before the accident. He sustained injuries in the accident including a head injury and woke up in the hospital one month after the accident. No field sobriety tests were done due to the severity of the injuries.

A blood test was done of Rodriguez five hours after the accident, showed no drugs, narcotics or alcohol in his blood. Rodriguez was not issued a summons as a result of the accident or after the accident. Applegate could not determine how the accident occurred. One of the other drivers was intoxicated. Applegate testified regarding the burn off rate of alcohol. However, there is no testimony or evidence as to the amount of alcohol or when it was consumed by Rodriguez prior to the crash.

Rodriguez did not receive a summons for unsafe lane change, which is listed as the reason for the scheduled suspension. There was no testimony or evidence regarding Rodriguez making any lane changes. Rodriguez did not receive any summons as a result of the October 16, 2016 accident.

LEGAL ANALYSIS AND CONCLUSION

The Commission is empowered to suspend a motorist's driving privileges for a violation of any provision of the motor vehicle statutes or for any other "reasonable grounds" N.J.S.A. 39:5-30. The Legislature has vested the authority in the Commission, subject to prompt review, to impose a driver license suspension as a preliminary matter prior to a plenary proceeding in a motor vehicle fatality case N.J.S.A. 39:5-30(e)(3). Where the Commission proposes suspension of driving privileges under N.J.S.A. 39:5-30 as an administrative enforcement of the motor vehicle regulations, it bears the burden of proof by the preponderance of the competent and credible evidence of facts essential to such suspension. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

The primary object of a suspension or revocation of a driver's license "is to foster safety on the highway and not to impose criminal punishment to vindicate public justice." Atkinson, supra, 37 N.J. at 155; see also David v. Strelecki, 51 N.J. 563 (1968). The determination rests on a finding that "a law of the highway has been violated and that the highway would be a safer place for the public if the violator were removed as a driver for some period of time." *Ibid*. Suspensions must be imposed only for the purpose of reforming the particular motorist and are not to be imposed administratively for the purpose of deterring others. This matter involves a proposed suspension of respondent's license for a substantial period due to the death of another motorist during an accident in which it is alleged that respondent unsafely changed lanes.

In this matter the notice of scheduled suspension says in connection with the accident of October 16, 2016, resulting in death that Rodriguez violated N.J.S.A. 39:4-88b unsafe lane change. The notice states that a police summons was issued to Rodriguez which is incorrect. Rodriguez has not received a summons as a result of the October 16, 2017 accident. There was no testimony regarding Rodriguez changing

lanes. In fact, there was no testimony regarding how the collision occurred. Rodriguez could not remember how the accident occurred because he sustained a head injury.

Rodriguez consumed alcohol prior to the accident. There was no testimony as to what time he consumed the alcohol or the amount of alcohol that he consumed. When his blood test was complete at the hospital, five hours after the accident, it revealed that there was no alcohol, drugs or narcotics in his system. The scheduled suspension did not list driving while intoxicated as the reason for the suspension. There was no evidence to determine how the accident occurred, if Rodriguez was responsible for the accident or if his blood alcohol was above the legal limit. The testimony regarding the burn off rate of alcohol was not based on the amount of alcohol that was consumed by Rodriguez since there was no testimony regarding the consumption or the time of consumption.

I **CONCLUDE** that Rodriguez did not make an unsafe lane change resulting in the death of Devenio and Georg Anton. I further **CONCLUDE** that the testimony and evidence are not sufficient to show that Rodriguez's actions were the cause of the accident resulting in the death of Devenio and George Anton because there was no testimony as to how the accident occurred. Accordingly, respondent's driver's license should not be suspended.

ORDER

Based upon the foregoing, I **ORDER** that the scheduled suspension of respondent's driver's license be **DISMISSED** and that his driving privileges remain in full force and effect.

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N J S A 52 14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention Exceptions". A copy of any exceptions must be sent to the judge and to the other parties.

3-28-18

DATE



KIMBERLY A. MOSS, ALJ

Date Received at Agency

March 28, 2018


Date Mailed to Parties

MAR 29 2018

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

ljb

WITNESSES

For Petitioner

Robert Applegate

For Respondent

None

EXHIBITS

For Petitioner

- P-1 New Jersey Crash Investigation Report Dated October 16, 2016
- P-2 Incident Report of Robert Applegate Dated October 16, 2016
- P-4 Motor Vehicle Abstract of Elvis B Rodriguez



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

This decision was mailed to the parties

on MAR 29 2018



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

AFFIRMED
N. J. MOTOR VEHICLE COMMISSION
By ORLA Date 5-21-18

INITIAL DECISION

OAL DKT NO MVH 03327-18

AGENCY DKT NO. KXXXXXXXXX05432

MOTOR VEHICLE COMMISSION,

Petitioner,

v

STEPHEN KOO,

Respondent

Motor Vehicle Commission, Petitioner, Kelly Brown-White appearing pursuant to N J A C 17:27 6(a)

Stephen Koo , pro se

Record Closed April 6, 2018

Decided April 6, 2018

BEFORE JOANN LASALA CANDIDO, ALAJ

STATEMENT OF THE CASE

On or about January 12, 2018, the New Jersey Motor Vehicle Commission (petitioner) issued a Scheduled Suspension Notice to Stephen Koo (respondent), proposing to suspend his driving privileges for sixty-days because of the accumulation

of 12 or more points as a repeat offender. This continues to disqualify respondent for his commercial endorsement as well indefinitely

* separate passenger endorsement indefinite suspension continues until below 12 pts.

PROCEDURAL HISTORY

Petitioner transmitted this matter to the Office of Administrative Law on March 1, 2018, for determination as a contested case pursuant to N.J.S.A 52 14F-1 to -13. A hearing was conducted on April 6, 2018, on which date the record was closed

FINDINGS OF FACT

Based upon a review of the entire record, I **FIND** the following to be facts

Respondent's driving record on file with petitioner as of this hearing is as stated in Exhibit P-1 Respondent accumulated twenty-one points as indicated on his driver abstract His New Jersey Driving privileges were suspended for fifteen days in March 2018 and his ^{passenger endorsement on} Commercial Driver License (CDL) is suspended indefinitely for an accumulation of nineteen points at the time of the OAL hearing on January 12, 2018 On September 23, 2016, a speeding ticket was issued in New York which carried a violation of two points, bringing the total point violations from nineteen to now twenty-one as a persistent violator It is that violation that triggered the sixty-day suspension

(PTPA)

DISCUSSION

Petitioner, which is "allocated" to the State Department of Transportation, has all the functions, powers, and duties of the prior Division of Motor Vehicles (DMV), except as otherwise provided Regulations promulgated by the DMV "continue with full force and effect", unless amended or repealed N J S A 39:2A-4a & d

Petitioner is empowered to suspend a motorist's driving privileges for a violation of any provision of the motor vehicle statutes or for any other "reasonable grounds "

N J S.A. 39 5-30 Petitioner also has specific authority to suspend a motorist's driving privileges for the accumulation of 12 or more points in certain specified time periods.

N J S.A. 39 30-8

The authorizing statutory provision on point suspensions provides

Except for good cause, the director shall suspend for a period of no less than 30 days and no more than 180 days, except as provided in section 6 of this act, the license to operate a motor vehicle of any person who accumulates

- a 12 or more points in a period of 2 years or less, or
- b 15 or more points in a period greater than 2 years, or
- c at least 12 points but fewer than 15 points in a period greater than 2 years, unless the licensee notifies the division in writing within 10 days of the date of mailing of the proposed notice of suspension of his intention to attend a driver improvement course that is approved by the director, and satisfactorily completes such course

* * *

The administrative law judge presiding at a hearing held pursuant to this section shall only consider evidence of the actual number of points assessed and the period of time during which such points were accumulated, taking into consideration any point reduction credits earned by the licensee, in issuing a suspension. He may consider other relevant evidence in considering the appropriateness of any portion of a suspension issued in excess of 30 days

[N J S A 39.5-30 8] ✓

Pursuant to the statutory authority, regulations were adopted that implemented suspensions based upon the accumulation of points thusly

The Chief Administrator shall, except for good cause, suspend a person's license to operate a motor vehicle and/or motorized bicycle in accordance with the following schedule

Points Accumulated	Period of Suspension
1 12 to 15 points in a period of two years or less	30 days
2 16 to 18 points in a period of two years or less	60 days
3 19 to 21 points in a period of two years or less	90 days
4 22 to 24 points in a period of two years or less	120 days
5 25 to 27 points in a period of two years or less	150 days
6 28 or more points in a period of two years or less	not less than 180 days
7 15 to 18 points in a period greater than two years	30 days
8 19 to 22 points in a period greater than two years	60 days
9 23 to 26 points in a period greater than two years	90 days
10 27 to 30 points in a period greater than	120 days

two years

11. 31 to 35 points in a period greater than

150 days

two years

12. 36 points in a period greater than two

not less than 180 days

years

13. 12 to 14 points in a period greater than

30 days

two years

[N J A C 13 19-10 2.]

The fact that respondent needs to drive for various reasons is not determinative, every motorist is, to some extent, dependent upon the ability to drive. Respondent is currently residing in New York so that he may earn a living. He feels that he has continually been picked on by the police and he is being discriminated against. Motor vehicle license suspensions are primarily intended to protect the safety of the public. David v Strelecki, 51 N J 563 (1968). Based upon his driver abstract and the accumulation of more than nineteen points in a two-year period, I must concur with the Commission and recommend the sixty-day suspension.

CONCLUSION

I **CONCLUDE** that respondent's driving privileges should be suspended as proposed by petitioner for a period of sixty-days ✓

ORDER

It is hereby **ORDERED** that the Scheduled Suspension Notice issued to respondent by petitioner be and is hereby **AFFIRMED**

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO. Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties

April 6, 2018
DATE

Joann Lasala Candido
JOANN LASALA CANDIDO, ALAJ

Date Received at Agency

APR - 9 2018

Date Mailed to Parties

ljb

Ann James Beavers

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

LIST OF EXHIBITS

For Petitioner

P-1 Packet of Documents from Agency

For Respondent

None



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

**This decision was mailed to the parties
on APR - 9 2018**

*Date of mailing: May 30, 2018

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: HXXXX XXXXX 06612
OAL DOCKET NUMBER: MVH 1654-17**

IN THE MATTER OF :
CHARLES C. HUTCHINSON : **FINAL DECISION**

The Motor Vehicle Commission (MVC or Commission) hereby determines the matter of the proposed denial of a New Jersey motor vehicle dealer license to **CHARLES C. HUTCHINSON**, respondent. Pursuant to N.J.S.A. 39:10-19 and N.J.A.C. 13:21-15.5, the Commission denied respondent a dealer license due to his having committed a disqualifying crime and for the failure to disclose such on his application.

Prior to this final agency determination, I have reviewed and considered the Initial Decision of the Administrative Law Judge (ALJ) and the letter of exceptions to the Initial Decision, which has been filed with the Commission by counsel for respondent. By way of reply to respondent's exceptions, counsel for petitioner, MVC, belatedly submitted correspondence indicating that it will rely upon its closing briefs that are already part of the record. Based upon a de novo review of the record presented, I shall accept and adopt in full the findings and conclusions contained in the Initial Decision and shall affirm the recommendation of the ALJ.

In the Initial Decision, the ALJ concluded, after a thorough and careful examination of the evidence and a comprehensive analysis of the applicable legal principles that the Commission acted properly in denying respondent's application "due to a willful misrepresentation or omission in an application for a dealer license." Initial Decision at

14. Additionally, the ALJ found that "respondent committed a disqualifying crime or offense within the meaning of N.J.A.C. 13:21-15.1 and -15.5, and failed to demonstrate sufficient rehabilitation." Id. at 19.

Counsel for respondent filed a letter of exceptions to the ALJ's Initial Decision. In the letter, respondent set forth errors of fact that he contends are the basis to set aside the Initial Decision. When taken individually or as a whole, I find that the complained of errors do not call for repudiation of the ALJ's recommendation.

First, respondent complains that his leasing dealer license was not revoked in 2013, but was voluntarily surrendered after his landlord terminated the property lease. The Initial Decision's indication that the respondent's dealer license was revoked rather than surrendered is a minor discrepancy since respondent's dealer license would have been revoked due to his lack of having a proper place of business.

Second, respondent complains that the ALJ incorrectly found that respondent lost his auto body license due to a tax issue with the State. A careful reading of the hearing testimony, however, indicates that respondent admitted that his auto body license "was suspended for a tax matter." T 158:8.¹

Third, respondent complains that the ALJ incorrectly found that used car dealers have financial responsibilities. I find, however, that the ALJ was correct in observing that "a used car dealer is subject to a criminal background check and fingerprinting because dealers work with contracts, monies, car titles, registrations and warranties, and have financial responsibilities, such as serving as an escrow agent for transactions." Initial

¹ "T" refers to the Transcript of Recorded Proceedings, dated September 21, 2017 before the Honorable Jeffrey N. Rabin, ALJ.

Decision at 10. Respondent's testimony did not definitively indicate that he would not offer financing to purchasers, and in any event, the MVC does not offer carve out licenses to dealers who may not offer financing.

Fourth, respondent complains that the ALJ found that character letters evidencing rehabilitation were inadequate. As the ALJ correctly noted, respondent failed to provide character letters from individuals who had knowledge of respondent's reputation and community status. Id. at 19. The letters, instead, were "based solely on respondent having performed car repairs." Ibid. I find that the ALJ was correct in his finding that "none of the four character reference letters came from persons who had the applicant under their supervision." Ibid. Therefore, the letters were inadequate evidence of respondent's rehabilitation.

Fifth, respondent argues that the ALJ erred in finding that the respondent "researched the criteria for a used car license before filing his application." Id. at 12. Respondent's testimony under cross-examination confirmed that respondent researched the requirements prior to submitting his application. T151:14-17 and T153:2-8.

It is a well-established principle that

[t]he credibility of a witness and the weight to be given to his testimony involve the consideration of many other matters, such as his personal interest in the subject-matter in controversy, his opportunity of observation or knowledge of the subject about which he is testifying, the influences under which he may be testifying, his demeanor on the witness stand, etc., all of which are circumstances for a [trier of fact], who see[s] the witness, to consider in determining what credit and weight should be given to the witness and his testimony.

[Gorczynski v. Public Service Interstate Transp. Co., 5 N.J. Super. 191, 194 (App. Div. 1949) (quoting Floersch v. Donnell, 82 N.J.L. 357 (Sup. Ct. 1912)).]

In the hearing, the ALJ had the opportunity to assess the respondent's credibility and found him lacking in his explanation that his landlord filled out the application incorrectly on his behalf. Given the principle of deferral to the ALJ's ruling, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.6(c), and my own review of the record, I find that respondent intentionally filled out his application untruthfully with the intent to conceal his criminal background.

Respondent's letter of exceptions raises several legal issues in which he contends the ALJ erred. First, respondent claims that the parties entered into an enforceable settlement agreement at the pre-hearing conference. Respondent's assertion mischaracterizes the Pre-hearing Conference Report, which does not indicate that upon submission of four character letters and a copy of the respondent's college diploma that respondent would automatically receive a used car dealer license. Exhibit J-5, page 5a. Therefore, I find that the ALJ was correct in ruling that there was no binding settlement of this matter at the pre-hearing conference, and nowhere in the Pre-hearing Conference Report did the Commission waive its right to have the matter referred to the Office of Administrative Law (OAL) for a full hearing. Initial Decision at 20. Indeed, at the formal de novo hearing conducted before the ALJ, the respondent was provided a full opportunity to present all evidence of rehabilitation in a forum allowing for sworn testimony to be assessed.

Next, respondent argues that the Commission failed to comply with the Rehabilitated Convicted Offenders Act (RCOA), N.J.S.A. 2A:168A-2. As set forth in the Initial Decision at 15 – 20, the Commission adopts the findings of the ALJ in full and incorporates them in this Final Decision.

The RCOA states:

Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, no State, county or municipal 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 disqualify or discriminate against an applicant for a license or certificate or an application for admission to a qualifying examination on the grounds that the applicant has been convicted of a crime, or adjudged a disorderly person, except that a licensing authority may disqualify or discriminate against an applicant for a license or certificate if N.J.S. 2C:51-2 or any disqualifying criminal activity set forth in subsection a. of section 7 of P.L.2009, c.53 (C.17:11C-57) is applicable, or if a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought. In determining that a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business, the licensing authority shall explain in writing how the following factors, or any other factors, relate to the license or certificate sought:

- a. The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying;
- b. Nature and seriousness of the crime;
- c. Circumstances under which the crime occurred;
- d. Date of the crime;
- e. Age of the person when the crime was committed;
- f. Whether the crime was an isolated or repeated incident;
- g. Social conditions which may have contributed to the crime;
- h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional

work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

[N.J.S.A. 2A:168A-2.]

As to subsection 2(a), respondent's crime was theft by failure to make required disposition of property received (N.J.S.A. 2C:20-9). The nature of the duties of a used car dealer is to transact business involving large sums of money. Therefore, I adopt the findings and conclusion of the ALJ's Initial Decision that respondent's crime adversely relates to the occupation, trade, vocation, profession and business of a used car dealer. Initial Decision at 17.

As to subsection 2(b), the nature and seriousness of the crime adversely relates to a used car dealer because respondent, as an accountant, had a fiduciary duty to his client and any theft of funds violates both criminal and ethical laws. In addition, the ALJ correctly found that misappropriation of \$80,000 is a second degree violation under N.J.S.A. 2C:20-2(b)(1)(a). Initial Decision at 17 – 18.

As to subsection 2(c), the circumstances of the crime cannot be analyzed in the existing record, but as the ALJ correctly found, respondent offered no mitigating circumstances that could be considered. Initial Decision at 18.

As to subsection 2(d), the date that the crime took place was over ten years ago, however, the final disposition of the case occurred in 2013, and respondent was on probation until April 2018 and he is still paying restitution to the victim. Moreover, the ten-

year look back period is not statutory, and merely provides a rough guideline that the Commission considers when evaluating an applicant's rehabilitation. Ibid.

As to subsection 2(e), the respondent was forty-five years old when the crime was committed, and as the ALJ noted, respondent was an experienced professional who worked for several accounting firms for twenty-five years before the crime took place. Initial Decision at 18 – 19.

As to subsection 2(f), it appears that the crime was an isolated incident. Initial Decision at 19.

As to subsection 2(g), no mitigating circumstances regarding social conditions that may have contributed to the crime were placed into evidence. Ibid.

As to subsection 2(h), I adopt the ALJ's findings that respondent's character letter references are from individuals whose knowledge of respondent centered on automobile repair work that respondent performed for them rather than any knowledge of the respondent's reputation or conduct in the community. None of the reference letters were from persons who had the applicant under their supervision. Ibid.

Accordingly, the ALJ properly considered all the RCOA factors in concluding that respondent failed to demonstrate sufficient rehabilitation of his criminal behavior.

Therefore, I hereby determine that: (a) respondent intentionally supplied untruthful information on his application when he indicated that he had not been charged with a crime; (b) a weighing of the RCOA factors does not support the contention that

respondent has been rehabilitated; and (c) the Pre-hearing Conference Report is not a binding settlement that entitles respondent to be granted a used car dealer license.

The ALJ, after considering the circumstances of this case, concluded that the Commission acted properly in denying respondent's application. In making his recommended decision in this case, the ALJ correctly and thoroughly considered the RCOA factors set forth by N.J.S.A. 2A:168A-2. Based on an independent review of the record and evaluation of these factors, I concur with each of the ALJ's assessments as detailed in the Initial Decision at 15 – 20. In light of my concurrence with the ALJ's assessment of all relevant factors and the balancing of such on this record, I shall not disturb the ALJ's recommendation that a used car dealer license be denied to respondent.

It is, therefore, on this 30th day of May, 2018, **ORDERED** that the application for a used car dealer license to **CHARLES C. HUTCHINSON** is **DENIED**. This Order is entered without prejudice to any future applications respondent might make to the Commission, which will be considered by the Commission on its merits at that time.



B. Sue Fulton
Chair and Chief Administrator

BSF: rdd

cc: Thomas G. Russomano, Esq.
Nonee Lee Wagner, DAG