

REDACTED



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

AFFIRMED
N. J. MOTOR VEHICLE COMMISSION
By M. Crawford Date 10/10/2023

INITIAL DECISION

DISMISSAL

OAL DKT. NO. MVH 02238-23

AGENCY REF. NO. Wilmer A.

Garcia – Dealer Lic. #01878U

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v.

**THREE BROTHERS AUTO
SALES, INC.,**

Respondent.

**Nonee Lee Wagner, Deputy Attorney General, for petitioner (Matthew J. Platkin,
Attorney General of New Jersey, attorney)**

No appearance by or on behalf of respondent

Record Closed: July 10, 2023

Decided: August 25, 2023

BEFORE KATHLEEN M. CALEMMO, ALJ:

STATEMENT OF THE CASE

On December 27, 2021, pursuant to N.J.S.A. 39:10-20, N.J.A.C. 13:21-5(a)(18), and N.J.A.C. 13:21-15.15(a), the New Jersey Motor Vehicle Commission (MVC) issued an Order of Suspension to Wilmer A. Garcia on behalf of Three Brothers Auto Sales, Inc. (Three Brothers). The suspension was the result of MVC's discovery that Three Brothers had allegedly issued fraudulent temporary registrations to 780 unique vehicles while only recording thirteen retail sales.

PROCEDURAL HISTORY

Beginning on December 10, 2021, the MVC attempted to conduct a compliance review of Three Brothers' temporary registration account. After Three Brothers failed to appear at three scheduled audits, the MVC issued an Order of Suspension, Notice of Preliminary Hearing, and Notice of Proposed Revocation dated December 27, 2021. After adjournments to allow Three Brothers to provide documentation, another compliance audit was held on February 8, 2022. At the second per-hearing conference, on March 8, 2022, the MVC proposed a revocation of Three Brothers' dealer license due to repeated violations of temporary registration fraud. Mr. Garcia disagreed with the disposition and requested a hearing before the Office of Administrative Law (OAL). The MVC transmitted this matter to the OAL as a contested case on March 13, 2023.

The matter was scheduled for a telephonic hearing on April 20, 2023. In attendance at the hearing were the following representatives from the MVC: Jessica O'Connor, Regulatory Officer; Daniel Buchanan, Manager of the Business Licensing Unit; Theodore Lefkovich, Compliance Officer 2; Ernest Distefano, Compliance Officer 2; and Richard Alfano, Compliance Officer 2. No one appeared for or on behalf of Three Brothers. After waiting an appropriate time, I entered a Failure to Appear by Three Brothers. On April 20, 2023, my assistant sent an email to the parties, with notice to respondent by regular mail, advising of the failure to appear for the hearing. As stated in the email notification, I allowed the MVC to file an appropriate motion to dismiss the matter with notice to respondent.

On May 22, 2023, the MVC filed a letter brief, Certification of Jessica O'Connor, and Certification of Service in support of its motion to dismiss respondent's appeal for failing to appear at the April 20, 2023, hearing. When no responsive pleading was filed by July 10, 2023, I closed the record.

FACTUAL FINDINGS

I FIND the following as FACTS:

This matter was scheduled for a telephonic hearing on April 20, 2023, at 10:30 a.m. Three Brothers was duly notified of the hearing. The Notice of Hearing contains the following language: "If you do not attend the hearing, the file will be returned to the transmitting agency for appropriate action, which may include imposition of the proposed penalty or granting the relief requested by the other party." No one for or on behalf of Three Brothers appeared at the hearing.

On May 22, 2023, the MVC filed a motion to dismiss the appeal. In accordance with the Certification of Service, the motion papers were serviced via Overnight UPS Delivery on:

Three Brothers Inc.
Attn: Wilmer Garcia
[REDACTED]
Hackettstown, New Jersey 07840

Wilmer Garcia
[REDACTED]
[REDACTED], New Jersey [REDACTED]

Three Brothers never explained its failure to attend the hearing. Three Brothers was given a second chance to participate but it failed to respond to MVC's motion to dismiss.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

Under N.J.S.A. 39:10-20, the MVC has the authority to suspend, revoke, and fine a licensed motor vehicle dealer for violations of the motor vehicle dealership regulations. Under N.J.A.C. 13:21-15.14(b)(d), the motor vehicle dealership can request a hearing before the OAL to challenge the determination by the MVC.

Pursuant to N.J.A.C. 1:1-14.4:

- (a) If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).
- (b) If the non-appearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.
- (c) If the judge receives an explanation:
 - 1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or
 - 2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter and, at his or her discretion, order any of the following:
 - i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;
 - ii. The payment by the delinquent representative or party of reasonable expenses, including

attorney's fees, to an aggrieved representative or party; or

- iii. Such other case-related action as the judge deems appropriate.
- (d) If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

I **CONCLUDE** that Three Brothers and its representative, Mr. Garcia, were provided with appropriate notice of the scheduled telephonic hearing on April 20, 2023. The hearing notice contained a specific warning to the parties of the consequences of a non-appearance. Despite having been provided with appropriate notice, respondent failed to appear and failed to provide the OAL with an explanation for its non-appearance.

The OAL did not receive "an explanation for the nonappearance within one day" of the appellant's non-appearance at the scheduled hearing. N.J.A.C. 1:1-14.4(a). After having not received an explanation, N.J.A.C. 1:1-14.4 directs the Clerk to return the matter to the transmitting agency for appropriate disposition. Rather than immediately returning this matter to the transmitting agency for appropriate disposition, I directed the MVC to file an appropriate motion. Thereby granting Three Brothers another opportunity to respond.

On or about May 22, 2023, the MVC effectuated service of its motion on Three Brothers and Wilmer Garcia, individually. Despite ample opportunity to respond, no responsive pleading was filed. There has been no contact to date from Three Brothers or Mr. Garcia.

I **CONCLUDE** that the motion to dismiss the appeal of Three Brothers is **GRANTED**. Three Brothers has effectively abandoned its appeal by failing to appear at the hearing and failing to respond to the MVC's motion to dismiss.

ORDER

Based on the foregoing, I **ORDER** that the New Jersey Motor Vehicle Commission's motion to dismiss the appeal filed by Three Brothers Auto Sales, Inc, and Wilmer Garcia, Dealer License Number 01878U is **GRANTED**. The appeal is **DISMISSED**.

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.

August 25, 2023
DATE

Kathleen M. Calemno
KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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APPENDIX

EXHIBITS

For petitioner

- Letter Brief, Motion to Dismiss, dated May 22, 2023

For respondent

None



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW



INITIAL DECISION

OAL DKT. NO. MVH 07124-23

AGENCY REF. NO. DXXXX

XXXXX 09912

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v.

ANTHONY J. DUHAIME-CANDEIAS,

Respondent.

Deniss Mikolay, Deputy Attorney General, for petitioner (Matthew J. Platkin,
Attorney General of the State of New Jersey, attorneys)

Anthony J. Duhamie-Candeias, respondent, pro se

Record Closed: August 31, 2023

Decided: September 6, 2023

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter arises out of a proposed suspension of respondent's driving privileges for 730 days pursuant to N.J.S.A. 39:3-37 and N.J.S.A. 39:5-30 for intentional misstatements of fact respondent made on New Jersey Driver Examination Permit Application. By notice dated October 30, 2020, petitioner, Motor Vehicle Commission

(MVC), notified respondent of the proposed suspension and thereafter respondent requested a hearing. MVC transmitted the matter to the Office of Administrative Law (OAL), where, on July 31, 2023, it was filed for determination as a contested case.

A hearing was held on August 31, 2023, whereupon the record closed.

SUMMARY OF RELEVANT TESTIMONY

Petitioner's Case

Diana Santiago testified as follows:

She is employed by MVC at their North Bergen office as a technician. Her job is to input data supplied by applicants, print the form and provide it to the applicant for them to complete and sign. She is the technician that did so for respondent. She had no recollection of her interaction with respondent.

She would never tell an applicant to change an answer on an application.

CROSS EXAMINATION

If an applicant had a question as to how to complete an application she would explain the question on the application to the applicant.

Courtney Davison testified as follows:

She is employed by MVC as an investigator. She explained her job duties, and how she is familiar with the present matter.

The application submitted by respondent on his application (P-4) is the reason for the issuance of the proposed suspension (P-2).

Respondent submitted his NY license to the technician when he applied for a NJ license. The NY license was discovered to be suspended. A standardized report for misstatement on the application is generated (P-7).

The suspension of respondent's NY license was confirmed by a CJIS Response (P-8) and an email from the Queens D.A. (P-9).

NO CROSS EXAMINATION

Respondent's Case

Anthony J. Duhaime-Candeias, Respondent, testified as follows:

Respondent read into the record his November 19, 2020 letter to MVC, which MVC received on November 20, 2020 (R-1).

Respondent knew his NY license was suspended at the time he completed the NJ application. He changed his answer regarding having a NY license at the direction of the clerk.

CROSS EXAMINATION

Respondent admitted that NY State notified him of the suspension prior to the NJ application.

CREDIBILITY

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir.

1963); see Polk, supra, 90 N.J. 550. Credibility findings “are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record.” State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

I had no issues with the testimony of either Ms. Santiago or Ms. Courtney. Both were straightforward and direct in their testimony. Ms. Santiago was candid in stating she had no recollection of her interaction with respondent.

Respondent’s testimony was somewhat problematic. Mr. Duhaime-Candeias stated that he changed his answer on the application at the direction of Ms. Santiago is simply not believable. He knew when he completed the application that his NY driver’s license was suspended. His assertion that he only stated it was not was at the direction of Ms. Santiago. This makes little to no sense. He would have the undersigned believe that he made a false statement on his application, knowing that it was false at the time, because the clerk at the MVC office told him to do so. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954). The testimony itself must be credible. This assertion by respondent is not.

FINDINGS OF FACT

1. Respondent had a New York State driver's license, issued on March 11, 2016, with an expiration date of September 12, 2020. (P-6)
2. Respondent's New York state driver's license was suspended indefinitely, effective August 3, 2020, by the New York State Department of Motor Vehicles. That notice of suspension was issued on July 21, 2020. (P-3)
3. Respondent was aware of the New York suspension at the time he applied for a license in New Jersey.
4. On September 22, 2020, respondent completed a Driver Examination Permit Application at the MVC office located in North Bergen, New Jersey. (P-4)
5. Diana Santiago was the technician at the North Bergen office who input the data into respondent's application.
6. On said application appears the question: Do you have a valid driver license or non-driver identification card in any other state, province, territory or country? Respondent checked the Yes box, crossed out that answer and checked the No box. (P-4)
7. Also, on said application appears the question: Is your driving privilege now suspended, revoked, canceled, disqualified in any other state, province, territory or country? Respondent checked the No box. (P-4)
8. Both answers were false. Respondent knew both answers to be false at the time he completed the application.
9. MVC issued a Scheduled Suspension Notice dated October 30, 2020, which set forth a proposed suspension of 730 days, or two years. Said suspension was to commence November 23, 2020. (P-2)
10. MVC always sets forth a suspension of 730 days. The purpose of the hearing is to consider mitigating factors, per the testimony of Ms. Davison.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

N.J.S.A. 39:3-37 states:

A person who gives a fictitious name or address or makes any other intentional misstatement of a material fact in an application for registration of a motor vehicle, an application for a waiver pursuant to section 15 of P.L.1995, c. 112 (C. 39:8-55) of the emission standards requirement, or an application for a driver's license or in a preliminary application, examination or proceeding, or a person who knowingly sells, loans or gives an identification document to another person for the purpose of aiding that person to obtain a driver's license, registration certificate or waiver certificate for which that person is not qualified, shall be subject to a fine of not less than \$200 or more than \$500, or imprisonment for not more than six months or both, at the discretion of the court. The director shall, upon proper evidence not limited to a conviction, revoke the registration of the motor vehicle or driver's license of a person who violates this section for a period of not less than six months or more than two years.

N.J.S.A. 39:5-30(a) states:

Every registration certificate, every license certificate, every privilege to drive motor vehicles, including commercial motor vehicles as defined in P.L. 1990, c. 103 (C. 39:3-10.9 et al.), every endorsement, class of license, and commercial driver's license, may be suspended or revoked, and any person may be prohibited from obtaining a driver's license or a registration certificate, or disqualified from obtaining any class of or endorsement on a commercial driver's license, and the reciprocity privilege of any nonresident may be suspended or revoked by the director for a violation of any of the provisions of this Title or on any other reasonable grounds, after due notice in writing of such proposed suspension, revocation, disqualification or prohibition and the ground thereof.

In the instant matter there is no question that respondent's New York license was suspended effective August 3, 2020. There is also no question respondent was aware of the same, having admitted so during his testimony, at the time he applied for a driver license in New Jersey. Accordingly, petitioner MVC has met its burden by a

preponderance of the credible evidence that petitioner is in violation of N.J.S.A. 39:3-37 by making intentional misstatement of a material fact in an application.

N.J.S.A. 39:3-37 provides for a revocation of a driver license of not less than six months nor more than two years. The Scheduled Suspension Notice provided for a suspension of two years.

The remaining issue is to determine what is the appropriate period of suspension. It is abundantly clear that respondent knew his New York license was suspended when he completed the New Jersey application. His statement that he provided incorrect information based on the advice of a clerk is simply not believable. However, the basis for the New York suspension is not a terrible driving history or some criminal or other unsavory activity. He was suspended for failure to maintain vehicle liability insurance coverage. While certainly maintaining liability insurance is quite important, it often is impacted by financial difficulties. Considering the basis for the New York suspension, I cannot conclude that a two year suspension in the instant matter is appropriate. It seems that a six month suspension would serve MVC's purpose in providing a deterrent to others to not make fraudulent statements on applications, and would be sufficient punishment to respondent for his foolish action.

I **CONCLUDE** that respondent violated N.J.S.A. 39:3-37, and that the appropriate penalty is a six month suspension of his driving privileges.

ORDER

It is **ORDERED** that respondent's driving privileges are suspended for a period of six month for violation of N.J.S.A. 39:3-37; and that such suspension will commence in accordance with notice issued by the NJMVC/Chief Administrator.

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.



September 6, 2023

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

September 6, 2023

Mailed to Parties:

September 6, 2023

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APPENDIX

List of Witnesses

For Petitioner:

Diana Santiago

Courtney Davison

For Respondent:

Anthony J. Duhaime-Candeias, Respondent

List of Exhibits

For Petitioner:

- P-1 Certified Driver's Abstract, dated 7/21/23
- P-2 Scheduled Suspension Notice, dated 10/30/20
- P-3 NY State DMV Suspension Order, dated 7/21/20
- P-4 NJ Driver Examination Permit Application, dated 9/22/20
- P-5 Current Driver Information, dated 9/23/20
- P-6 NY State Driver License, dated 3/11/16
- P-7 NJMVC Incident Report No. 2002185, dated 9/23/20
- P-8 CJIS 2000 Response, dated 9/23/20
- P-9 E-Mail from Queens D.A.,, dated 9/23/20
- P-10 NY State DMV Suspension Order, dated 10/23/20

For Respondent:

- R-1 Letter from respondent to MVH, received 11/20/20