

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Case No. 2021-0053

APPEAL OF TRADZ, LLC

**REPLY BRIEF OF THE PETITIONER, TRADZ, LLC, IN THIS
RULE 10 DISCRETIONARY APPEAL, WHICH MATTER HAS
BEEN APPEALED FROM THE
DEPARTMENT OF SAFETY – DIVISION OF MOTOR VEHICLES**

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Oral Argument Requested to be Argued
by Craig Donais, Esq.

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ARGUMENT

I. Introduction.

In its opening brief, Petitioner persuasively explained that the hearing examiner erred by, among other things: (a) erroneously deciding that vehicles “cannot fit the definition of an abandoned vehicle,” even though there is no comprehensive definition of “abandoned vehicle”; (b) erroneously determining that a vehicle that begins as a repossession can never be or become abandoned; and (c) erroneously concluding that a person cannot abandon his/her own vehicle. See Petitioner’s Brief. As explained by Petitioner previously, such errors of law necessitate reversal (or at least vacating) of the decision below, as they undergird the erroneous conclusion that DMV properly denied Petitioner’s title applications. See id.

In response, New Hampshire Department of Safety, Division of Motor Vehicles (“DMV”) submitted an opposition brief that, among other things, rests upon: (1) numerous factual inaccuracies; and (2) legal arguments that are unsupported and are irrational and nonsensical while simultaneously ignorant of practical realities. See DMV’s Brief.

Accordingly, there is little value in responding to every aspect of DMV’s brief. Nor will this Court be served by Petitioner simply reiterating its prior arguments; however, Petitioner continues to rely upon the assertions in its opening brief and incorporates the same herein by reference.

With such in mind, Petitioner now turns to a few specific matters raised in DMV’s brief that, as explained below, are meritless. Thus, and for the reasons explained in Petitioner’s opening brief, reversal of the decision below is warranted.

II. Many “facts” described by DMV are inaccurate.

Much of DMV’s brief is committed to detailing the factual/procedural history of this matter, rather than addressing the legal arguments at issue. See DMV’s Brief, p. 7-16. The problem, however, is that DMV’s recitation thereof is, in part, inaccurate.

For example, as to the three vehicles from Dan O’Brien Kia, DMV claims that “Tradz did not call Mr. Asbury to testify at the hearing” and that there was purportedly no evidence to support Petitioner’s claim that Jason Asbury provided authorization to Petitioner to remove the vehicles as abandoned. DMV’s Brief, p. 14. In reality, the hearing transcript shows that Asbury was present and available to testify. See, e.g., Trans., p. 5. Moreover, Petitioner would have called Asbury to testify had there been sufficient time, but the examiner cut the hearing short and did not allow Petitioner to present more than two witnesses. See Trans.

Nonetheless, those witnesses who did testify for Petitioner testified that Petitioner received explicit authorization from Asbury, a Dan O’Brien manager, to remove the abandoned vehicles from the O’Brien lot and that Asbury also provided Petitioner with the vehicles’ factory keys. Trans., p. 76-115. There is no other way Petitioner could have obtained the factory keys without being given the same by an authorized O’Brien representative. See id. Thus, for DMV to suggest that there was no such authorization nor evidence thereof is disingenuous and ignores substantial evidence.¹

¹ Importantly, as to Asbury and the O’Brien vehicles, DMV relies upon only hearsay from an investigator about what Asbury purportedly told the investigator, instead of the first-hand accounts of Asbury’s actions as

Likewise, DMV erroneously suggests that Stephan Condodemetraky testified that the O'Brien vehicles were repossessions and that there was supposedly no testimony/evidence that such were abandoned. See DMV's Brief, p. 15, 37. In reality, however, Condodemetraky testified that these vehicles were abandoned and identified as abandoned by an O'Brien employee. See Trans., p. 76-86.

Similarly, as to the 2014 BMW, DMV's brief largely ignores the handwritten note the prior vehicle owner provided to Petitioner, which note clearly evidences abandonment, particularly given the note states that she "authorize[d] Tradz LLC to take a . . . black bmw that belonged to me." Appx. p. 28. Use of the past tense via "belonged" imputes that the owner disclaimed, surrendered, or otherwise relinquished her rights/ownership of the vehicle and explicitly allowed Petitioner to take possession thereof; yet DMV's brief discounts and largely ignores such. See DMV's Brief.

Moreover, DMV takes issue with Petitioner's business by noting, among other things, that it is "wholly unclear why so many of Tradz's repossession jobs result in payment disputes." DMV's Brief, p. 18. Despite such disparaging comments throughout its brief about Petitioner, the fact remains that Petitioner tows hundreds, if not thousands, of vehicles each year. Although some payment disputes exist as to certain vehicles, such represents only a minute fraction of vehicles that Petitioner tows – a fact that DMV ignores to create misleading impressions about Petitioner.²

testified to by Petitioner's witnesses. Compare DMV's Brief, p. 13-14, with Trans., p. 76-115.

² DMV's brief is replete with slanderous comments about Petitioner. Besides these potshots doing nothing to advance DMV's position,

Further, DMV claims that there were various “issues” with paperwork submitted by Petitioner. See DMV’s Brief, p. 9. Such claims are, however, self-serving and disingenuous, particularly when DMV is in control of reviewing such paperwork and given that these purported “issues” derive from DMV’s inaccurate interpretation/application of laws pertaining to abandoned vehicles.

There are other examples throughout DMV’s brief concerning factual inaccuracies. For the sake of brevity, Petitioner will not describe every such erroneous statement, but Petitioner encourages this Court to carefully review the record and Petitioner’s brief for a proper rendition of the factual/procedural history here.

III. DMV’s legal arguments are erroneous.

As a threshold matter, DMV attempts to explain the statutory/regulatory process regarding the removal and sale of abandoned vehicles. See DMV’s Brief, p. 21-24. Petitioner, however, maintains that this Court, not DMV, is in the best position to determine the same, as such concerns the interpretation and confluence of various statutory/regulatory provisions. See *Dichiara v. Sanborn Reg’l Sch. Dist.*, 165 N.H. 694, 696 (2013) (identifying this Court as “the final arbiter of the intent of the legislature as expressed in the words of the statute considered as a whole”).

Petitioner has also done nothing untoward, nefarious, or criminal, despite DMV’s contrary suggestions. Rather, the issues on appeal have comprised a longstanding dispute between the parties, with such stemming from a fundamental disagreement about abandoned vehicle statutes and the practical aspects of towing – with DMV erroneously interpreting and misapplying the former, while having no real-world experience as to the latter.

DMV also makes the absurd claim that a person cannot abandon his/her own vehicle, and, thus, the statutory/regulatory provisions pertaining to abandoned vehicles purportedly cannot apply when a person no longer desires his/her vehicle and provides explicit permission to remove the vehicle. See DMV's Brief, p. 32-36. Besides logic, common sense, and the arguments set forth in Petitioner's opening brief that demonstrate the fallacy with DMV's assertions, the plain language of RSA 262:40-a, I, also contradicts DMV's position.

Said provision provides that any "owner or person in lawful possession of any private property . . . on which a vehicle is . . . apparently abandoned may: (a) Cause the removal of the vehicle in a reasonable manner." RSA 262:40-a, I (emphasis added); see also RSA 262:40-c, I (providing that "[n]o person shall abandon a motor vehicle, registered or unregistered, on any way or on any property other than his or her own" (emphasis added)). Contrary to DMV's position, there is nothing that precludes a private property owner from abandoning his/her own vehicle on his/her own property, as abandonment can occur on "any private property" – in other words, nothing in the statutory scheme requires the now-abandoned vehicle owner to be different from the owner of the property where the car is abandoned, yet DMV attempts to read this additional language into the statutory scheme. Cf. Bovaird v. New Hampshire Dep't of Admin. Servs., 166 N.H. 755, 759 (2014) (explaining that this Court

“can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include” (quotation omitted).³

Additionally, although DMV correctly notes that RSA 262 is “designed to allow vehicle owners and lienholders an opportunity to challenge the tow, to receive detailed notice of the removal and possible sale of the vehicle, and to afford an opportunity to retrieve or otherwise claim a vehicle that has been towed under the Law,” DMV thereafter erroneously claims that said scheme somehow “becomes wholly unnecessary when a vehicle owner is simply giving away their vehicle” as abandoned. DMV’s Brief, p. 35.

In making this “wholly unnecessary” argument, DMV ignores that any lienholder concerning an abandoned vehicle would surely be interested in learning about the tow thereof. This is why the RSA 262 abandoned-vehicle process can and should be followed; these are not “ridiculous statutory requirements” as DMV claims, *id.*, particularly in light of the potential interest a lienholder might have (and may want to assert), which is an interest that DMV ignores.

Moreover, the waiting periods and notification process in RSA 262 concerning abandoned vehicles prior to an auction further allow any owner to potentially change his/her mind about abandoning the vehicle, at least until the auction occurs. Thus, for DMV to claim that owner-initiated

³ To the extent DMV takes issue with whether private property owners provided notice of abandoned vehicle removals to police, see RSA 262:40-a, I(a), Petitioner notes there is nothing in the statutory/regulatory scheme precluding a tow company from providing the requisite notice to police on the property owner’s behalf – moreover, in Petitioner’s experience, the tow company is always the entity providing notice to police after towing.

removals of their own abandoned vehicles are somehow inconsistent with/not supported by RSA 262 is a claim that lacks any adequate basis in law, fact, or common sense.

DMV's brief further suffers from a fundamental misunderstanding concerning towing. One issue here is whether a vehicle that is out for repossession can be considered abandoned – per DMV, the answer to that question is no. See DMV's Brief, p. 24-32. Such argument is largely premised upon DMV's claim that "the abandonment status occurs *prior* to removal," rather than after the abandoned-vehicle notification process is completed. Id., p. 31. Thus, per DMV, any vehicle out for repossession can never become abandoned or simultaneously be considered both repossessed and abandoned.

A few examples, however, show significant flaws in DMV's logic. If DMV is correct, then it is possible that when a police officer orders the tow of a vehicle left on the side of the road (whether due to an accident, being left unattended for days, etc.), such violates the abandoned-vehicle provisions in RSA 262.

This is because, per DMV, the towed vehicle could be out for repossession, even though it is clearly abandoned roadside and directed by an officer to be towed as such. The problem is that neither the officer nor tow company involved would likely have any knowledge about the repossession status thereof – there is no central database of which Petitioner is aware for New Hampshire police to determine whether a repossession order has issued from a lienholder for a vehicle, and the tow company would also have no knowledge either, unless the tow company

serendipitously received a repossession order from a particular lienholder for the vehicle the officer requested to be towed as abandoned.

Nevertheless, under DMV's logic, this sort of vehicle could never be considered abandoned, and, thus, the abandoned-vehicle process in RSA 262 could not apply, simply because a lienholder had issued a repossession order at some point, without anyone's knowledge. This position makes no sense.

Rendering this position even more unreasonable is that, without a central repossession database, there is also no way for DMV to know or confirm a vehicle's repossession status, unless DMV wished to expend significant resources to query every potential lienholder concerning whether they issued a repossession order on each abandoned vehicle.

Similarly, when a private property owner, like an apartment-complex owner, calls a tow company to remove a vehicle from a parking lot that has, for example, been there without permission for a lengthy period, according to DMV's logic, that seemingly abandoned vehicle cannot be considered abandoned if any lienholder ever issued a repossession order on it. Again, however, neither the tow company nor the property owner (or DMV) may have any knowledge about any repossession order that issued.

Yet, DMV claims that, in all scenarios, such vehicles cannot be considered abandoned if a repossession order ever issued; thus, per DMV, the statutory/regulatory scheme pertaining to abandoned vehicles, including the notification procedure and eventual auction process, cannot apply. This is so even though DMV also claims in a contradictory manner that the abandonment determination must be made at the outset, prior to a vehicle's

removal – but how are the entities removing apparently abandoned vehicles supposed to know whether any lienholder issued a repossession order?

The answer comes from the statutory/regulatory scheme pertaining to abandoned vehicles, which provides a clear notification process to both vehicle owners and lienholders. As explained in Petitioner’s opening brief, it is only after this notification process that a vehicle’s abandoned status can be confirmed – if, after such notification, no one wants or claims the vehicle, it is clearly abandoned and should be able to be sold at auction per applicable provisions in RSA 262. This is so even if there is a repossession order out for the vehicle, as the abandoned-vehicle notification process detailed in Petitioner’s opening brief is designed to provide both vehicle owners and lienholders the ability to, prior to auction, potentially reclaim a vehicle that has been towed as, or has become, abandoned.

DMV’s position also fails to account for circumstance changes. As explained by Petitioner previously, even if a vehicle is towed per a repossession order initially, there is nothing in the statutory scheme that precludes that vehicle from later becoming abandoned. Such could occur when, for example, the lienholder fails/refuses to pay for, or retrieve, the vehicle (typically such occurs when the vehicle is damaged and/or has little value) – under such circumstances, the vehicle is certainly abandoned, as no one wants it.

Nor does DMV’s position account for the intent of the people involved with a tow. For example, a private landowner, like in the apartment example above, could intend to remove an apparently abandoned vehicle by calling a tow company (which then retrieves the vehicle and goes through the abandoned vehicle process), even though, unknowingly,

the vehicle owner might not have abandoned the vehicle or a lienholder might have simultaneously issued a repossession order on it – how is the landowner or tow company supposed to know when the vehicle is initially towed? Or, perhaps a vehicle owner intended to abandon his/her vehicle in a parking lot, and it is thereafter towed as abandoned, but the lienholder, either before or after said abandonment, issues a repossession order; again, how is the tow company supposed to know? DMV's brief appears to assume the tow company is supposed to divine such intent and knowledge at the outset, but such, of course, ignores practical realities.⁴

In these circumstances (and others too), DMV claims the abandoned-vehicle process cannot be followed. If so, then, such would result in tow companies being required to indefinitely hold/store vehicles that no one claims, with no recourse as to selling the same or recovering any costs associated with towing/storage. Surely this result cannot be intended by the legislature, but that is DMV's position.

Moreover, if DMV's position is correct, then such raises the question as to why various forms relating to abandoned vehicles, like the TDMV-71 form, fail to include any sections concerning whether anyone confirmed if a repossession order had issued on the vehicle. The practical execution of towing vehicles would also change significantly if DMV is

⁴ This also raises the question as to, when attempting to determine whether a vehicle is abandoned, whose intent controls. Is it the intent of the vehicle owner, the private landowner or officer requesting a tow, the lienholder, or perhaps some combination thereof? Or does it depend upon the circumstances? These questions are left unanswered by DMV, but Petitioner's approach in having abandonment status confirmed after the notification process in RSA 262 occurs effectively resolves such issues.

correct, particularly given that private landowners and/or police calling for tows (as well as many tow companies and DMV) simply lack the capacity to confirm whether a lienholder may have issued a repossession order for a certain vehicle. In fact, Priscilla Vaughan, Bureau Chief, Title & Anti-Theft, of DMV recently admitted at a deposition that DMV lacks the ability to confirm whether a vehicle is out for repossession and that she is not familiar with the repossession process. See Addendum.

Accordingly, DMV's reasoning has no sound or logical basis. Simply put, just because a repossession order has issued with respect to a particular vehicle does not render it impossible for that vehicle to be abandoned or eventually become abandoned. Yet, DMV attempts to derive a hard-and-fast rule whereby any vehicle with any repossession order, regardless of the facts, can never be considered abandoned or go through the abandoned vehicle process under RSA 262. Such, however, makes no sense, as seen in the few examples above. The hearings examiner also adopted this same erroneous line of thinking when rendering the decisions below, thereby requiring reversal.⁵

⁵ This is especially so given that DMV's brief fails to account for RSA 262 being silent on how that statutory (and related regulatory) scheme interacts with provisions governing repossessions. DMV's analysis effectively creates artificial silos for repossessed vehicles on one hand and abandoned vehicles on the other, without reconciling the two or accounting for the possibility of conceptual overlap. As demonstrated by Petitioner, however, such artificiality drawn by DMV is incongruous with reality and the statutory scheme as constructed – the mere existence of a repossession order cannot and should not preclude a vehicle from being/becoming abandoned.

CONCLUSION

Thus, as stated above, and for the reasons in Petitioner's brief, the hearings examiner's rulings cannot stand, and DMV's brief does nothing to alter the result that Petitioner seeks. Accordingly, the relief sought by Petitioner in its opening brief should be granted.

Per Rule 16, Petitioner requests 15 minutes of oral argument by Craig Donais, Esq. Finally, the decisions appealed are in writing and included in the addendum.

Respectfully submitted,

TRADZ, LLC

By its Attorneys,

WADLEIGH, STARR & PETERS,
PLLC

Date: January 3, 2022

By: /s/ Craig Donais
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CERTIFICATION

I hereby certify that a copy of this reply brief has this 3rd day of January 2022 been served upon all counsel of record by e-filing with this Court. I further certify that this brief complies with the word limitation set forth in Rule 16, as there are 2,999 words in this reply brief, exclusive of any pages containing the table of contents, tables of citations, signature blocks, and other such matters. I also certify that this brief complies with all typeface and other formatting requirements.

/s/ Stephen Zaharias

Stephen Zaharias, Esq.

**ADDENDUM (Including Selected Portions of the Deposition
Transcript of Priscilla Vaughan)**

See attached.



State of New Hampshire

DEPARTMENT OF SAFETY

BUREAU OF HEARINGS

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03306

REPORT OF HEARINGS EXAMINER

RESPONDENT: Tradz LLC
HEARING DATE: 12/4/20
DATE OF REPORT: 12/18/20
HEARING LOCATION: WEBEX
HEARING #: 202013765
REFERENCE: TITLE DENIAL
PRESIDING HEARING EXAMINER: Michael P. King, Esq.
STATE REPRESENTED BY: Attorney Mary Maloney, NHDOS
Attorney Christina Wilson, NHDOJ
RESPONDENT REPRESENTED BY: Attorney Stephen Zaharais
OTHER PERSON(S) PRESENT: Priscilla Vaughan, Chief, Title Bureau
Michael Todd, Deputy Director, NHDMV
George Condodemetraky
Susan Condodemetraky
Stephan Condodemetraky
James Dale
Anthony Liccardi
Jason Asbury
Jocelyn Maloney
Jason Robarge

BACKGROUND:

This was the third scheduling of this hearing. The matter was initially scheduled in response to an order from Schulman, J., Merrimack County Superior Court. In the course of an existing Superior Court action, he questioned whether the respondent in this case had "exhausted administrative remedies".

The first hearing took place on 11/6/20. The matter was continued, in part, due to the technological limitations of having 8 people on a conference phone call, and, in part, due to a lack of definition of what the issues were to be decided. The

state also asserted that the particular title applications raised by the respondent had not yet been denied and the matter was not ripe for decision.

This second hearing took place on 11/20/20. The state indicated that denials that had been issued for the titles referenced at the prior hearing. However, the state questioned if the hearing had been scheduled under the proper statutory authority. The hearing examiner questioned the propriety of proceeding only on the denial of three titles that could not have possibly been the subject of the Superior Court order. The respondent argued that the court proceeding was "all encompassing". For matters of clarity and to insure all issues have been properly noticed, the matter was continued a second time to 12/4/20 to be held by WEBEX.

EXHIBITS:

State:

1. Title application paperwork - 2009 BMW (12 pages)
2. Title application paperwork - 2020 Kia (15 pages)
3. Title application paperwork - 2019 Kia (15 pages)
4. Title application paperwork - 2019 Subaru Impreza (7 pages)
5. Title application paperwork - 2012 Chrysler (10 pages)
6. Title application paperwork - 2013 Hyundai (14 pages)
7. Title application paperwork - 2014 BMW (13 pages)
8. Title application paperwork - 2019 Hyundai (11 pages)
9. Title application paperwork - 2000 Chevy 3500 (9 pages)
10. Title application paperwork - 2008 Chevrolet Silverado (6 pages)
11. Tradz LLC Case Summary - Merrimack County Superior Court (9 pages)
12. Tradz LLC Amended Complaint - Merrimack County Superior Court (21 pages)
13. Email dated 1/25/20 from Tradz to Priscilla Vaughan (with handwritten notes) (3 pages)
14. Title application paperwork - 2009 BMW (same vehicle as Exhibit 1) (6 pages)
15. Hearing Memorandum (13 pages)

Respondent:

1. Petitioner's Statement per Saf-C 203.03 (25 pages)

SYNOPSIS OF EVIDENCE:

While the documentary evidence presented in this case is substantial, the issue to be decided is straightforward. The state's position is that the 10 title

applications in question are repossessed vehicles and cannot be properly titled utilizing abandoned vehicle documentation. The respondent takes a contrary position.

STATUTE AND RULE REFERENCES:

Saf-C 1913.01 Abandoned or Unclaimed Vehicles.

(a) Pursuant to RSA 262:33, in the event a garage owner or storage company lawfully comes into the possession of a motor vehicle, he/she shall have a lien on the vehicle for the charges for storage and removal. In the event the motor vehicle owner fails to claim or pay such charges within the prescribed period, the garage owner or storage company of such abandoned or unclaimed vehicle shall submit a report to the director on form TDMV 71.

(b) An employee of a garage, dealership or towing service shall furnish the following on form TDMV 71:

- (1) Date vehicle was removed to the premises;
- (2) Vehicle's year, make and registration number;
- (3) Vehicle identification number;
- (4) Condition of vehicle;
- (5) Damage to vehicle, if any;
- (6) Owner's name and address, if known;
- (7) Name, address and telephone number of garage;
- (8) Indication as to whether:
 - a. Report made by police or towing service;
 - b. Market value of vehicle is under or over \$1,000;
 - c. Vehicle is in condition for legal use on a public way;
 - d. Request has been made for sale under 20 days without notice;
 - e. NCIC check has been conducted; and

f. Owner has been notified; and

(9) Date of notification.

(c) A garage owner or storage company may sell an abandoned or unclaimed motor vehicle in the event the vehicle has been stored pursuant to RSA 262:37 and the requirements of RSA 262:36-a and RSA 262:38 are satisfied.

(d) In the event an applicant for title purchased the motor vehicle at public auction at the seller's place of business, the applicant shall furnish the following to the bureau:

(1) A properly executed application for title, form TDMV 23, prepared by the local town or city clerk, dealer or lienholder, as applicable;

(2) A properly executed report of sale or transfer of a non-titled motor vehicle, form TDMV 22A;

(3) An affidavit on the prescribed form from the seller, garage owner or storage company who acquired the vehicle pursuant to RSA 262:40-a, containing a description of the circumstances of the acquisition and the procedures that were followed for the eventual sale of the motor vehicle;

(4) The appropriate fee, pursuant to RSA 261:20; and

(5) A properly executed verification of vehicle identification number, form TDMV 19A.

(e) A garage owner or storage company who has filed a notice to the director of an unclaimed or abandoned vehicle on TDMV 71, pursuant to RSA 262:36-a, III, may dispose of the vehicle upon obtaining permission from the director.

Saf-C 1916.01 Application for Title to a Repossessed Vehicle.

(a) Each applicant for title to a vehicle purchased after repossession shall furnish the following to the bureau:

(1) The existing title for the repossessed vehicle, with the lien release properly executed and assigned by the lienholder pursuant to Saf-C 1903.02;

(2) A properly executed application for title, form TDMV 23, prepared by the local town or city clerk, dealer or lienholder, as applicable;

- (3) The appropriate fee, pursuant to RSA 261:20; and
- (4) An affidavit of repossession, form TDMV 16, executed by the lienholder and delivered to the buyer upon resale of the vehicle.

(b) Each lienholder shall furnish the following on form TDMV 16:

- (1) Name and address of lienholder;
- (2) Name and address of debtor;
- (3) Dollar amount of lien;
- (4) Date of lien;
- (5) Vehicle's year, make, color and body style;
- (6) Vehicle identification number;
- (7) Date of default and subsequent possession of vehicle by lienholder; and
- (8) Signature of lienholder and date signed.

(c) Each applicant for title to a vehicle purchased after repossession, in which there is no title to the vehicle, because, for example, the vehicle was repossessed from a foreign jurisdiction, such as a military repossession, shall furnish the following to the bureau:

- (1) The documents set forth in (a)(2) through (a)(4) above, and one of the following:
 - a. The existing manufacturer's certificate of origin, with the lien release properly executed and assigned by the lienholder, pursuant to Saf-C 1903.02; or
 - b. A properly executed verification of vehicle identification number, form TDMV 19A, along with the original or certified copy of the registration.

259:87-a Repossess. - "Repossess" shall mean the act of obtaining physical possession of a motor vehicle by a lienholder or any person acting on his behalf for any actual or claimed breach of any condition contained in a security agreement.

261:4 Application for Certificate. -

III. If the application refers to a vehicle last previously registered in another state or country, the application shall contain or be accompanied by:

(a) Any certificate of title issued by the other state or country. Said certificate shall either be printed in the English language, or a notarized translation of the certificate shall be provided.

(b) Any other information and documents the director reasonably requires to establish the ownership of the vehicle and the existence or nonexistence of security interests in it.

(c) The certificate of a person authorized by the director that the vehicle identification number of the vehicle has been inspected and found to conform to the description given in the application, or any other proof of the identity of the vehicle the director reasonably requires.

261:7 Issuance of Certificate; Records. -

I. The department shall file each application received and, when satisfied as to its genuineness and regularity and that the applicant is entitled to the issuance of a certificate of title, shall issue a certificate of title of the vehicle.

261:11 Refusal of Certificate. -

The department shall refuse issuance of a certificate of title if any required fee is not paid or if it has reasonable grounds to believe that:

I. The applicant is not the owner of the vehicle;

II. The application contains a false or fraudulent statement; or

III. The applicant fails to furnish required information or documents or any additional information the director reasonably requires.

262:3-a Notification of Repossession. -

Any person who repossesses a motor vehicle, as defined in RSA 259:87-a, shall notify, within 2 hours after the repossession, a police officer of the town or city where the act of repossession occurred of the fact of the repossession and the name, address and telephone number of the owner and lienholder. If no police officer is available to receive the notification, then notification shall be given to the sheriff's department of the county where the act of repossession occurred. The police department or sheriff shall keep a record of such notification for 30 days after the notification.

DISCUSSION:

The titles in question fall into two categories: the three vehicles towed from Dan O'Brien Kia (Exhibits 1, 2 and 3) and 7 other vehicles (Exhibits 4-10).

The three vehicles towed from Dan O'Brien Kia were:

- 2009 BMW (Exhibit 1)
- 2020 Kia Sorrento (Exhibit 2)
- 2019 Kia Sedona (Exhibit 3)

The petitioner asserts that these vehicles were removed as "abandoned vehicles" by authority of an official of Dan O'Brien Kia and that the proper notification was made to the Concord Police by petitioner per Saf-C 262:40-a as a "standard industry practice".

RSA 262:40-a states that "the owner or person in lawful possession of any private property" may cause the removal of "a vehicle which is parked without permission or is apparently abandoned . . . provided he or she gives notice of such removal to a peace officer as soon as reasonably possible." "Industry practice" does not negate clear statutory criteria. The DMV investigation revealed that there was no record of Dan O'Brien Kia giving notice of removal to a peace officer. Furthermore, it strains credulity that two late model Kia vehicles were "parked without permission or . . . apparently abandoned" at a Kia dealership. This was clearly an attempt to categorize vehicles as "abandoned" that were actually repossessed vehicles.

In addition, as it pertains to each of these vehicles, it is an attempt to circumvent the requirements of titling a vehicle that has been brought in from another state. There are specific requirements that pertain to vehicles brought from out of state (see RSA 264:11 III). That requirement does not simply vanish because it was left at a dealership in New Hampshire.

As such, the denial of the title application is UPHOLD as to Exhibits 1, 2 and 3. IN addition to the upholding of the denial, the state has presented evidence that the Petitioner has attempted to convey Exhibit 1 to a third party purchaser rendering the denial of title as moot.

A similar rationale applies to the remainder of the applications. Each of these vehicles had liens on them. Some of the vehicles were last titled and registered in another state (Exhibits 4 and 7). This was a concerted effort to try to turn a repossession process into an abandoned vehicle. As the state asserted in their brief, you cannot have two statutory criteria at odds with one another. The intent of the legislature in implementing the abandoned vehicle law was not to allow one party to ask another party to tow a vehicle subject to a lien so that it can be disposed of or resold more easily. It is to insure payment to tow companies for services rendered when they respond to an accident scene, tow during a snow

emergency or remove vehicles from private property that is posted. The process initiated by the Petitioner was not contemplated in the passage of this legislation.

Exhibit 7 (2014 BMW) was towed from a location in Massachusetts at the request of the owner of the vehicle. This is another work around to avoid the MA titling requirements and to turn it into an abandoned vehicle. The petitioner claims that the owner abandoned the vehicle and requested the tow, but this is not the forum to determine if this transaction complied with MA law. Absent that, this will not be considered an "abandoned vehicle".

Exhibits 5, 6, 8, 9 and 10 all originated in New Hampshire. All were subject to liens. Each represents an attempt to avoid repossession requirements by claiming an abandoned vehicle.

DISPOSITION:

The denials of each of the 10 titles at issue are upheld on the basis that the process followed constituted an attempt to circumvent repossession requirements by attempting to categorize them as "abandoned vehicles". The vehicles cannot fit the definition of an abandoned vehicle when they are actually repossessed vehicles. In addition, the vehicle described in Exhibit 1 has been sold to a third party and the issue as to that title is moot.

/s/-----
Michael P. King,
Chief Hearings Examiner

Report printed: 12/18/20
Report emailed: 12/18/20

cc: Atty. Maloney
Atty. Wilson
Atty. Zaharais



State of New Hampshire

DEPARTMENT OF SAFETY

BUREAU OF HEARINGS

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

RULING ON MOTION FOR REHEARING

RESPONDENT: Tradz LLC
HEARING DATE: 12/4/20

BACKGROUND:

This matter was heard on 12/4/20 and a decision rendered on 12/18/20.

By pleading dated 1/8/21, the Petitioner filed a "Motion for Rehearing". The state responded by objection dated 1/13/21.

SYNOPSIS OF MOTION:

The Petitioner noted that the original decision failed to include appellate rights. The primary basis of the motion relates to the interpretation of the term "abandoned vehicle" as applied to the facts of this case.

STATUTE AND RULE REFERENCES:

262:40-c Abandoning a Vehicle; Penalty. -

I. No person shall abandon a motor vehicle, registered or unregistered, on any way or on any property other than his or her own without the permission of the owner or lessee of said property or, in the case of public property, of the police department having jurisdiction over the property and no person shall abandon a vehicle at a storage facility after being notified in person or by registered or certified mail to redeem the vehicle. For the purposes of this section, a vehicle shall be considered abandoned if it has been left for more than 24 hours without the appropriate permission being given or at a storage facility after having been given 10 days' notice to redeem it.

II. A storage facility to which an abandoned vehicle has been towed may dispose of such vehicle after complying with the notice requirements of RSA 262:36-a or RSA

262:38, as applicable. It shall be a rebuttable presumption that the notice was received if it was given pursuant to the provisions of this subdivision.

III. The last owner of record of a motor vehicle found abandoned, as shown by the files of the department, shall be deemed prima facie to have been the owner of such motor vehicle at the time it was abandoned and to have been the person who abandoned the motor vehicle or caused or procured its abandonment, unless said last registered owner is able to establish a transfer of ownership prior to abandonment, in which case the transferee shall be liable, or that the vehicle had been reported stolen to a law enforcement agency at the time of abandonment.

IV. Any person who violates the provisions of this section shall be guilty of a violation and shall be subject to a fine of not less than \$100 and not more than \$500 plus penalty assessment, and may be subject to the loss of driver's license or driving privilege and registration or privilege of registering as provided in RSA 263:56 and RSA 261:179.

V. The commissioner of safety or designee may assess costs of abandoning a vehicle, including but not limited to, reasonable towing, processing, disposal, and storage costs, against any person convicted of abandoning a vehicle in violation of this section, and the director shall, unless there is just cause to do otherwise, suspend the driver's license or driving privilege, and registration or privilege of registering of any person who has not paid such costs.

DISCUSSION:

The appellate rights were inadvertently omitted from the original decision. The "Motion for Rehearing" as filed is the appropriate pleading under RSA 541:3

The primary basis for determining that a vehicle is abandoned is found in RSA 262:40-c. This statute was amended effective 9/18/10 to include "at a storage facility." The prior version of RSA 262:40-c did not allow for a vehicle to be abandoned "at a storage facility". That would appear to be the statutory basis for the Petitioner's position. As such, it would be helpful to review the legislative history behind that amendment.

For purposes of this analysis, it is assumed without deciding, that the vehicles towed by or on behalf of Tradz and then retained for a period of time constitutes "at a storage facility" as contemplated by RSA 262:40-c.

The changes that included this language and other changes to sections of RSA 262:40-c were a collaborative effort of State Senator Letourneau, the Department of Safety, New Hampshire Towing Association and Towmasters. The New Hampshire Automobile Dealers Association submitted separate written testimony.

One of the introductory paragraphs in the written testimony contains this language:

"State and local law enforcement and DOT's (sic) rely on a quick and professional response from wrecker services to remove wrecked and abandoned vehicles from the highways to prevent lengthy and costly backup and dangerous chain-reaction collisions."

In another section of the written testimony that begins with "Section 10", this language is found:

"Under this bill, it covers not only abandoning a vehicle on the highway or on someone else's property but also abandoning it at a towing or storage facility after the required notice has been given to come and pick it up . . ."

And also:

"it refers to both license and registration or the privilege to drive or have a vehicle registered, so the penalty will apply to a resident of another state who abandons a vehicle here . . ."

One of the primary intentions of the legislation was to enhance the chances that tow companies would be reimbursed for the towing and storage costs when responding to a call to tow a vehicle from a highway, whether simply abandoned or to clear a crash site. The liable party is designate as the registered owner of the vehicle. The enforcement mechanism for collecting the fee involved a potential suspension of license and/or registration. There was no evidence that the petitioner availed itself of this collection mechanism. Unlike the scenarios presented in the legislative testimony, the Petitioner was not "stuck" with a tow bill incurred by performing a tow requested by an "authorized official" (see RSA 262:32).

The statute was not intended to allow an employee of a car dealership to call a business like the Petitioner's business to tow late model, valuable vehicles subject to liens from their lot as "abandoned" when all the facts and circumstances indicate that the vehicle was parked at the dealership to initiate a repossession. The documentation provided by the Petitioner indicates that the tow was authorized by the "property owner". The testimony at the hearing was that the individual who authorized the tow was, at that time, a General Sales Manager. When the DMV conducted an investigation, the General Manager of the dealership disavowed any knowledge of the tow or having given anyone the authority to arrange for a tow. Thus, the preponderance of the evidence is that the tow was not authorized by the "property owner".

The Petitioner refers to a handwritten note pertaining to a 2014 BMW as evidence of "abandonment". It is difficult to determine how this piece of paper can be construed to constitute abandonment. It is authority from the lawful owner of the vehicle to tow the vehicle. It does not meet any of the criteria listed in RSA 262:32 as a reason for "removal or impoundment". The owner gave specific authorization to conduct the tow. Again, it is difficult to reconcile this scenario with the specific intent of the legislation for abandonment at a tow facility.

As for the remainder of the vehicles, the Petitioner admits that each of these vehicles was towed in conjunction with a "repossession" process. (See Petitioner's statement, Paragraph 25), they argue that what started as a repossession ended as an abandoned vehicle. As stated in the original decision, this process is an attempt by the Petitioner to bypass the "repossession" laws and claim the abandoned vehicle process. This was clearly not the intention of the statute and that argument is rejected.

Even if the Petitioner's interpretation of an abandoned vehicle is correct, there is no evidence that the Petitioner met all of the statutory requirements of RSA 262:40-c. That statute requires "notice by registered or certified mail" to the owner to redeem the vehicle. The information submitted by the Petitioner simply says notice was given and fails to indicate the manner of such notice.

DISPOSITION:

For the reasons stated herein, the Motion for Rehearing is DENIED.

APPEAL:

This decision may be appealed to the New Hampshire Supreme Court within 30 days in accordance with RSA 541:6.

/s/ _____
Michael P. King,
Chief Hearings Examiner

Report printed: 1/27/21
Report emailed: 1/27/21

cc: Atty. Maloney
Atty. Wilson
Atty. Zaharais

THE STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY SUPERIOR COURT

STATE OF NEW HAMPSHIRE *

V. *

DOCKET # 217-2021-CR-82

STEPHAN CONDODEMETRAKY *

VIRTUAL DEPOSITION OF BUREAU CHIEF PRISCILLA VAUGHAN
NH DMV TITLE & ANTI-THEFT BUREAU,

This deposition took place on November 19, 2021 at 9:40 a.m.

DEPOSITION TRANSCRIPTION VERBATIM

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IN ATTENDANCE

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603.224.1236

STIPULATIONS

It is stipulated and agreed between the parties that this deposition is taken by WebEx remote videoconferencing technology, and the transcript may be used for all purposes that are legal and accepted in the State of New Hampshire, waiving all formalities, including notice, caption, and filing.

All objections, except as to form, are reserved and may be taken in court at time of trial.

A copy of the transcript will be provided to opposing counsel for review and signing by the deponent.

It is further agreed that if the deponent has not signed the deposition within 30 days, or by time of trial, the deponent's signature is waived and the deposition may be used for all purposes as if signed by the deponent.

TRANSCRIBER NOTE: False starts, stutters, "um" and "uh" have deliberately been omitted for readability of the transcript.

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EXHIBITS

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1 PRISCILLA VAUGHAN, duly sworn.

2 INTERROGATORIES BY ATTORNEY VAUGHAN:

3 Q Good morning, Ms. Vaughan. My name is Alex Vitali.

4 I'm the lawyer representing Stephan Condodemetraky. I

5 am doing this deposition with you through a video

6 today. I am located at my office at 10 Ferry Street

7 in Concord, New Hampshire. I'm in a conference room

8 with Attorney Sonia Roubini, as well as Stephan

9 Condodemetraky. And may I ask you to state your full

10 name, spell your last name for the record.

11 A Priscilla Vaughan, last name is V.a.u.g.h.a.n.

12 Q And who is in the room with you?

13 A Christina Wilson.

14 Q Okay, great. So as we proceed with this deposition,

15 there's going to be some exhibits and documents we're

16 going to go over. I would ask that anytime you're

17 reading from a document or referencing something, you

18 let us know, okay?

19 A Yes.

20 Q Have you ever done a video deposition before?

21 A No.

22 Q Okay. I haven't either, so. But if anytime you can't

23 hear me or something is coming in, you know, broken

24 up, please raise your hand or let me know. The most

- 1 important thing today is that everything is getting
2 recorded clearly with audio. And I will do my best to
3 avoid nods and things like that, and I'll ask you to
4 do the same thing, okay?
- 5 A (Nodded affirmative).
- 6 Q We just need a yes.
- 7 A Yes.
- 8 Q Great. So I want to start with a little bit about
9 your background, Ms. Vaughan. Where do you work right
10 now and what's your job title?
- 11 A I work for the Department of Safety, DMV. I am the
12 Bureau Chief of Title and Anti-Theft Bureau.
- 13 Q How long have you held that job as the Bureau Chief of
14 Title and Anti-Theft Bureau?
- 15 A 2001 was when I started that position.
- 16 Q Okay. So you've been there for about 20 years?
- 17 A I have been with the Department of Safety for 39
18 years. In this position, about 20, yes.
- 19 Q Okay. Can you briefly describe your role as the
20 Bureau Chief of - Is it okay to abbreviate it by
21 saying the Title Bureau?
- 22 A (Nodded affirmative).
- 23 Q Is that a yes?
- 24 A That's fine, yes.

1 Q Okay. I'm going to call it Title Bureau throughout
2 this deposition, okay?

3 A (Nodded affirmative). Yes.

4 ATTORNEY SIRANIAN: Again, Ms. Vaughan, you need
5 to say yes or no. You can't nod because we're audio
6 recording this. And you're nodding; I understand, and
7 it's hard not to because you can see us, but you do
8 need to say yes or no, please.

9 A Yes.

10 Q Can you describe your job responsibilities as the
11 Bureau Chief of the Title Bureau?

12 A Yes. I oversee the Bureau's operation with all the
13 employees and all the paperwork that comes into the
14 office. We make sure that all federal laws and state
15 laws are complying. There's a lot of titles that come
16 through the state. So we have to make sure that -
17 there's different types of title applications, and we
18 look to make sure that everything is done correctly.

19 Q How many employees are in the Title Bureau?

20 A Twenty-eight.

21 Q And do you supervise all 28 of them?

22 A I oversee them. I do have two other supervisors that
23 do the direct correspondence with them. But if
24 they're not out, I do take care of all of them.

1 Q Okay. So it sounds like you're - if we were to think
2 of like an organizational chart, you're at the top,
3 you have two people that are below you, right?

4 A Correct. Yes.

5 Q Who are they?

6 A Currently, Shyloh Casey and Lora Maurice. Lora
7 Maurice just retired. Oh, she left work with our
8 bureau; yesterday was her last day.

9 Q Okay. Just in real general terms, how do - Is there a
10 standardized process for how the Title Bureau reviews
11 and does its work on title applications?

12 A Yes.

13 Q Can you tell me a little bit about that process in the
14 context of abandoned vehicles?

15 A So abandoned vehicles, it starts out with a form,
16 Release of Motor Vehicle Record. It's a DSMV 505, and
17 a 71 form, which is a Notice of Removal. It starts
18 with that. The tow customer would send that to the
19 DMV requesting owner and lienholder information.
20 That's the first step. And then we --

21 Q What happens if --Oh, go ahead, Ms. Vaughan. I didn't
22 mean to speak over you.

23 A And then we fulfill that information based on
24 compliance with the law, and we provide the owner and

- 1 access to that other people don't, right?
- 2 A So there is some - most people have access to
- 3 everything that we have access to.
- 4 Q You have the ability to see if a VIN number - if a
- 5 vehicle is registered in a different state based on
- 6 its VIN number, correct?
- 7 A So doesn't the customers.
- 8 Q Pardon me?
- 9 A The customers also have access - If you're referring
- 10 to NMVTIS, they have access to that also.
- 11 Q I'm not sure. What's NMVTIS?
- 12 A It's the National Motor Vehicle Title Information
- 13 System.
- 14 Q Okay.
- 15 A N.M.V.T.I.S.
- 16 Q Could you say that again? It came through choppy.
- 17 A It's N.M.V.T.I.S.
- 18 Q Okay. Do you have access to information about
- 19 vehicles that are under repossession?
- 20 A No.
- 21 Q Why not?
- 22 A We have no reason to have that information.
- 23 Q What do you mean you have no reason to have that
- 24 information?

- 1 A The Department of Safety, the only time that we even
2 entertain repossessions are through our rules, which
3 is an Affidavit of Repossession. We just use the
4 paperwork, and that's the only time we ever know
5 something's repossessed, is because of that.
- 6 Q Okay. So it sounds like an affidavit of repossession
7 is a different document, or is a document submitted to
8 the DMV; is that correct?
- 9 A That is correct.
- 10 Q The affidavit of repossession is submitted after a
11 vehicle has actually been repossessed, correct?
- 12 A It's not at that time; it's when they sell a vehicle
13 that has been repossessed.
- 14 Q Okay. So when a vehicle was repossessed, and then
15 later on sold, is when the DMV would receive an
16 affidavit of repossession?
- 17 A Correct.
- 18 Q Okay. I want to ask you, are you familiar with the
19 motor vehicle repossession process?
- 20 A I am not.
- 21 Q You're not familiar with how motor vehicles are
22 repossessed?
- 23 A I have a theory, but I don't have any laws or rules.
24 I don't know anything about them.

1 Q Okay. You don't know anything about how - I just want
2 to make sure I understand this. So you know the laws
3 and rules but you don't know how vehicles are
4 repossessed out in the field; is that right?

5 A The business practice, I do not know how that works.
6 I know how the paperwork works. We are not in the
7 business of repossessions.

8 Q Okay. Because as the Title Bureau, you're in the
9 business of issuing titles, correct?

10 A Within the statute.

11 Q "Within the statute." And a title would be issued
12 when there's a change in ownership, correct?

13 A Correct.

14 Q Okay. But you've been doing your job for about 20
15 years. You said you have some theories on
16 repossession. So you know a little bit about or
17 suspect how the repossession process works, right?

18 A Correct.

19 ATTORNEY SIRANIAN: I'm going to object. She
20 says that it is her opinion. That's not why we're
21 here today. She is not somebody who is going to be
22 testifying regarding the process of repossession.
23 She's made it very clear. You asked several different
24 ways, and her theories and opinions are just that. So

1 made earlier.

2 Q You can go ahead and answer the question, Priscilla.
3 She is just making an objection for the record. So
4 what does "out for repossession" mean to you?

5 A I really don't know.

6 Q You don't know, okay. So I want to direct you to the
7 exhibit we're looking at, A-1. How do you know that
8 that vehicle was a repossession?

9 A So I don't have the history of this, so I can't really
10 accurately - other than the fact that - There's either
11 one or two things that could have happened: We could
12 have already rejected it because the lienholder was
13 listed on the 505, which there's no way no one's going
14 to know it's a - no one's going to know who the
15 lienholder is unless it was a repossession, because
16 the 505 is the beginning of this whole process. 505
17 and 71, you were asking us who the owner and
18 lienholder is. This particular form, I have a feeling
19 this one - and I don't know for a fact without -
20 because I don't have my computer in front of me. This
21 particular form states who the lienholder owner is. I
22 don't even think we responded to that. How did he
23 know that? He came to my office --

24 Q Okay. So --

1 A He came to my office --

2 ATTORNEY WILSON: Let him --

3 A Go ahead. Never mind.

4 Q I was asking you to finish. With the lag, I didn't
5 mean to speak over you.

6 ATTORNEY SIRANIAN: Is there a question before
7 Priscilla?

8 A No. Yes.

9 ATTORNEY VITALI: I'm going to object to these
10 continued objections by you, Attorney Siranian,
11 because for the standard stipulations, all objections
12 except to the form of a question are preserved, and I
13 think that your objections are interrupting the flow
14 of testimony and influencing the witness's answers as
15 evidenced by the last objection you made prior to this
16 one.

17 ATTORNEY SIRANIAN: And that's fine, and that's
18 noted for the record. However, Priscilla doesn't have
19 a question before her to answer.

20 Q So Ms. Vaughan, I'm going to ask you again what, in
21 that application, those materials in front of you,
22 lead you or your examiner to believe that the vehicle
23 was a repossession?

24 A I am assuming that my assistant supervisor found that

1 we rejected it in the first place because it was a
2 repossession. I only see one letter here, so I - She
3 had said it was a repossession. So she had to have
4 some indication, whether it was from that first
5 letter, or it was from this documentation where the
6 lienholder was listed on there.

7 Q Okay. So somebody made a determination that this car
8 was a repossession through something they saw on the
9 paperwork; is that fair to say?

10 A Yes. Yeah.

11 Q Your agency does not have access to vehicles that are
12 potentially out for a repossession, right?

13 A Correct.

14 Q So it's really based on the information on the
15 application, not some kind of independent source,
16 right?

17 A Correct.

18 Q Did anybody follow up on these cars to ask if these
19 vehicles were in fact vehicles that were repossessed?

20 A I don't know that question. I don't know the answer,
21 I mean.

22 Q You said that you're not familiar with the
23 repossession process, so I'm not trying to get you to
24 speculate on anything with this next question, okay,