

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

No. 2021-0053

Appeal of Tradz, LLC

APPEAL PURSUANT TO RULE 10 FROM A JUDGMENT OF THE
DIRECTOR, DIVISION OF MOTOR VEHICLES

**BRIEF FOR THE NEW HAMPSHIRE DEPARTMENT OF SAFETY,
DIVISION OF MOTOR VEHICLES**

NEW HAMPSHIRE DEPARTMENT OF SAFETY,
DIVISION OF MOTOR VEHICLES

By Its Attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

and

ANTHONY J. GALDIERI
SOLICITOR GENERAL

Christina M. Wilson, Bar No. 268553
Assistant Attorney General
New Hampshire Department of Justice
Transportation and Construction Bureau
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3675
christina.m.wilson@doj.nh.gov

(Fifteen-minute oral argument requested)

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 4

ISSUES PRESENTED 6

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS 7

 I. Procedural Overview..... 7

 II. Administrative Proceedings 8

 A. Factual History of Vehicle Removals and DMV’s
 Denials 8

 i. History relating to seven (7) vehicles denied as
 repossessions..... 8

 ii. History relating to title denials for vehicles removed
 from Dan O’Brien Kia 11

 B. Hearing examiner’s Order 14

SUMMARY OF THE ARGUMENT..... 17

ARGUMENT 20

 I. STANDARD OF REVIEW 20

 II. OVERVIEW OF STATUTORY PROCESS FOR
 REMOVAL AND SALE OF ABANONED VEHICLES 21

 III. THE HEARING EXAMINER PROPERLY CONCLUDED
 THAT THE TEN VEHICLES DID NOT CONSTITUTE
 ABANDONED VEHICLES WITHIN THE MEANING OF
 RSA 262:40-a..... 24

 A. Repossessions by order of a lienholder cannot constitute
 an abandoned vehicle. 26

 i. A tow company cannot elect to treat a repossession as an
 abandoned vehicle because repossessions are clearly
 distinct from the removal and disposal of abandoned
 vehicles under New Hampshire Law. 27

 ii. Tradz LLC is attempting to title vehicles under the
 Abandoned Vehicle Law despite the vehicles never
 having been removed or stored under the Abandoned
 Vehicle Law. 29

 B. The abandoned vehicle law does not encompass the
 vehicle “abandoned” by the vehicle owner on the vehicle
 owner’s property. 32

C.	The evidence did not support a finding that the vehicles removed from Dan O'Brien Kia were removed at the request of a private property owner.	36
IV.	THE HEARING EXAMINER PROPERLY DETERMINED THAT THE ISSUE OF A TITLE APPLICATION FOR A VEHICLE THAT TRADZ NO LONGER POSSESSES IS MOOT.	38
	CONCLUSION	40
	CERTIFICATE OF COMPLIANCE	41
	CERTIFICATE OF SERVICE.....	42

TABLE OF AUTHORITIES

Cases

<u>Anderson v. Robitaille</u> , 172 N.H. 20 (2019)	25
<u>ATV Watch v. N.H. Dept. of Res. & Econ. Dev.</u> , 155 N.H. 434 (2007)....	39
<u>In re Jean-Guy’s Used Cars & Parts, Inc.</u> , 159 N.H. 38 (2009)	20
<u>K.L.N. ConsTR Co. v. Town of Pelham</u> , 167 N.H. 180 (2014).....	25
<u>N.H. Ass’n of Counties v. State</u> , 158 N.H. 284 (2009).....	39

Statutes

RSA 259:1	22
RSA 259:4-a	22, 27
RSA 259:87-a	27
RSA 261:14	36
RSA 262:31	7, 31
RSA 262:31 to -40-c.....	21
RSA 262:32	21, 22, 27, 33
RSA 262:32, IV	32
RSA 262:33	passim
RSA 262:34	8, 23, 28, 35
RSA 262:36-a	21, 23, 28, 36
RSA 262:36-a, III	24
RSA 262:37	23, 24, 31
RSA 262:38	23, 24, 28, 36
RSA 262:39	24, 28, 31
RSA 262:3-a	27, 28

RSA 262:40-a	passim
RSA 262:40-a, I.....	passim
RSA 262:40-a, IV	23, 31
RSA 262:40-c	7, 31
RSA 382-A:9-600.....	28
RSA 541:13	20
RSA 541:6	20

Other Authorities

<u>Sup. Ct. R. 16(3)(b)</u>	38
-----------------------------------	----

Rules

<u>N.H. Admin. R. Saf-C 1913.01(b)</u>	8
<u>N.H. Admin. R. Saf-C 1913.01(d)</u>	24
<u>N.H. Admin. R. Saf-C 1913.01(d)(3)</u>	10

ISSUES PRESENTED

- I. Whether the hearing examiner correctly concluded that a tow company cannot sell a repossessed vehicle under the Abandoned Vehicle Law where there is no evidence the vehicle was abandoned and the tow company is using the abandoned vehicle process to circumvent repossession requirements?

- II. Whether the hearing examiner properly concluded the Abandoned Vehicle Law did not apply to a vehicle towed at the request of the vehicle's owner from her private property where there was no evidence of "abandonment" and to find otherwise would be contrary to the intended purpose of the statute?

- III. Whether the hearing examiner properly concluded the Abandoned Vehicle Law did not apply to vehicles where there was no evidence the vehicles were removed at the request of a private property owner or that the vehicles were "parked without permission or . . . apparently abandoned" as required by RSA 262:40-a?

- IV. Whether the hearing examiner properly determined that the denial of a title application was moot where the applicant has resold and no longer possesses the vehicle?

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS¹

I. Procedural Overview

This appeal arises from the New Hampshire Department of Safety Division of Motor Vehicle's denial of ten (10) title applications for motor vehicles that the appellant, Tradz LLC ("Tradz") claims to have acquired and sold pursuant to New Hampshire's Abandoned Vehicle Law, which is set forth in RSA 262:31 through RSA 262:40-c (hereinafter collectively referred to the "Abandoned Vehicle Law"). Seven of the title denials at issue in this appeal were initially challenged in a lawsuit brought by Tradz against the New Hampshire Department of Safety Division of Motor Vehicles ("DMV") in Merrimack County Superior Court. See Tradz LLC v. New Hampshire Department of Safety, 217-2020-CV-00185.² On September 22, 2020, the superior court (Schulman, J.) determined Tradz should have sought review of these denials by the Department of Safety Bureau of Hearings. Pursuant to the superior court's order, Tradz requested an administrative hearing on the original seven vehicles, as well as the three vehicles removed from Dan O'Brien Kia, a licensed car dealership located in Concord, New Hampshire.

¹ References to Appellant's Brief shall be "AB," to Appellant's Appendix shall be "AAP," to Certified Record shall be "CR," and to the transcript of the December 4, 2020 administrative hearing shall be "TR."

² The superior court matter was dismissed in its entirety on September 2, 2021.

II. Administrative Proceedings

On December 4, 2020, the Bureau of Hearings held a hearing to review DMV's denial of the title applications. The hearing examiner heard testimony from Michael Todd, Deputy Director of DMV, Priscilla Vaughan, the administrator of DMV's Bureau of Title & Anti-Theft, Stephan Condodemetraky, general manager of Tradz LLC, and James Dale, an employee of Tradz LLC. The hearing examiner received evidence regarding the title applications submitted for each vehicle. The record established the following facts with regard to the ten vehicles.

A. FACTUAL HISTORY OF VEHICLE REMOVALS AND DMV'S DENIALS

i. History relating to seven (7) vehicles denied as repossessions

Tradz is a company that performs tow services, including repossessions, but is also licensed as a retail vehicle dealer in the State of New Hampshire. TR 86-87. On June 25, 2019, Tradz removed a 2014 BMW from Massachusetts and towed it back to New Hampshire. TR 33-34, 87. According to Tradz, the owner of the vehicle, Beverly Wilson, specifically asked Tradz to remove the vehicle from her property. TR 87. Tradz claimed this was a removal under New Hampshire's Abandoned Vehicle Law and submitted to DMV a "Notice of Removal," set forth on form TDMV 71.³ AAP 156. The form included a note that Tradz spoke

³ The TDMV 71 form, which is submitted to DMV following the removal of an abandoned vehicle, requires the tow company to furnish information regarding the removal of the vehicle, the condition of the vehicle, and owner contact information, if known. See RSA 262:34; N.H. Admin. R. Saf-C 1913.01(b).

with the lienholder on or around October 1, 2019, and the lienholder refused to pay for the towing and storage of the vehicle. AAP 156. This was the first time that Tradz claims to have engaged in an abandoned vehicle removal. TR 87-88.

Despite the tow occurring in June 2019, the initial abandoned vehicle paperwork was not received by DMV until October 2019, which was nearly three months after the 30-day statutory deadline had passed. TR 33-34. The issues with this paperwork raised a concern for DMV as to whether this vehicle was a repossession. TR 34. On November 13, 2019, DMV rejected the abandoned vehicle paperwork pending an explanation of why Tradz failed to comply with the statutory timeframe and whether this vehicle was abandoned or repossessed. AAP 159.

On January 15, 2020, Tradz towed a 2000 Chevrolet and thereafter submitted a “Notice of Removal” (TDMV 71) to DMV indicating this vehicle was removed under the Abandoned Vehicle Law. AAP 180. Shortly thereafter, on or around January 21, 2020, Tradz and DMV met to discuss DMV’s concerns regarding Tradz’s abandoned vehicle practices. AAP 226-228.

On January 28, 2020, DMV notified Tradz that both the 2014 BMW and the 2000 Chevrolet were rejected as abandoned vehicles explaining that, “Repossessions are not covered under the Abandoned Motor Vehicle Act. Please contact the lienholder to sign the title over to you.” AAP 160, 183. Despite receiving abandoned vehicle rejection notices from DMV in January, Tradz sold these two vehicles to itself at “auction” for one dollar (\$1) each on February 10, 2020 and on February 18, 2020, Tradz submitted

title applications for these vehicles under the abandoned vehicle rules.⁴ AAP 161-166, 184-189. Included in each application package was a completed TDMV 109 form, titled “Notice of Compliance Abandoned Motor Vehicles RSA 262:31-40-A.”⁵ The form for the 2014 BMW represented that Tradz removed the vehicle by order of the vehicle owner, Beverly Wilson, AAP 163, and the form for the 2000 Chevrolet indicated the vehicle was removed by order of the lienholder, Credit Acceptance, AAP 185.

Between March 4, 2020, and March 18, 2020, after DMV had already issued prior rejections explaining that repossessions are not covered by the Abandoned Vehicle Law, Tradz submitted five (5) additional title application packages under the abandoned vehicle rules. See AAP 124-155, 169-179, 190-195. These five applications were for the following vehicles: (1) 2019 Subaru, (2) 2012 Chrysler, (3) 2013 Hyundai, (4) 2019 Hyundai, and (5) 2008 Chevrolet.⁶ Like the 2000 Chevrolet, each application

⁴ The abandoned vehicle paperwork and title application for these two vehicles can be found in the record as follows:

- i. 2014 BMW was submitted as State’s Exhibit 7 and can be found at AAP 156-168; and
- ii. 2000 Chevrolet was submitted as State’s Exhibit 9 and can be found at APP 180-189.

⁵ The TDMV 109 form, which is submitted with the buyer’s title application for a vehicle purchased at an abandoned vehicle auction, requires the tow company/seller to provide information to demonstrate that the removal and sale of the vehicle complied with the Abandoned Vehicle Law. N.H. Admin. R. Saf-C 1913.01(d)(3).

⁶ The abandoned vehicle paperwork and title application for these five vehicles can be found in the record as follows:

- i. 2019 Subaru was submitted as State’s Exhibit 4 and can be found at AAP 124-130;

contained a completed Notice of Compliance form (TDMV 109) indicating the removal was performed by order of the vehicle lienholder. AAP 128, 138, 144, 172, 194. This immediately raised a concern for DMV because an order of removal by a lienholder indicates the vehicle was repossessed. TR 29, 39-40. On April 2, 2020, DMV denied the title applications for the five vehicles on the basis that repossessions are not covered by the Abandoned Vehicle Law. AAP 130, 140, 143, 174 195. On or about that same day, Tradz filed a lawsuit in Merrimack Superior Court challenging DMV's denials.

ii. History relating to title denials for vehicles removed from Dan O'Brien Kia

In June 2020, Tradz submitted Notices of Removal form (TDMV 71) to DMV for three (3) vehicles Tradz claimed were removed pursuant to the Abandoned Vehicle Law between June 15, 2020 and June 19, 2020. AAP 83, 94, 109. These three vehicles included: (1) a 2009 BMW, (2) a 2019 Kia, and (3) a 2020 Kia (hereinafter collectively referred to as "the Dealership Vehicles").⁷ AAP 83, 94, 109. Tradz claims to have held an

-
- ii. 2012 Chrysler was submitted as State's Exhibit 5 and can be found at AAP 131-140;
 - iii. 2013 Hyundai was submitted as State's Exhibit 6 and can be found at AAP 141-155;
 - iv. 2019 Hyundai was submitted as State's Exhibit 8 and can be found at AAP 169-179; and
 - v. 2008 Chevrolet was submitted as State's Exhibit 10 and can be found at AAP 190-195.

⁷ The abandoned vehicle paperwork and title application for the Dealership Vehicles can be found in the record as follows:

- i. 2009 BMW was submitted as State's Exhibit 1 and can be found at AAP 83-93;

“abandoned vehicle auction” on July 29, 2020, during which it sold these three vehicles to itself for one dollar (\$1) each. AAP 87, 100, 115. Each of the title applications submitted by Tradz for these vehicles included a Notice of Compliance form (TDMV 109) indicating Tradz removed the vehicles by order of the “property owner, 158 Manchester Road, Concord, NH.” AAP 90, 102, 116. This is the address of Dan O’Brien Kia, a licensed car dealership (hereinafter “Dan O’Brien”). TR 16, 52.

DMV found it unusual to see “abandoned” vehicles removed from a licensed dealership and, as a result, on September 28, 2020, DMV requested additional information from Tradz regarding the circumstances of removal of the Dealership Vehicles. AAP 91, 104, 121; TR 16-17. Shortly thereafter, on September 30, 2020, Tradz responded by merely reciting the language of RSA 262:40-a and stating the vehicles were removed at the request of a person in possession of private property. AAP 92, 106, 122; TR 17-18. Tradz’s response did not provide any specific details regarding the request for removal or the identity of the individual at Dan O’Brien that requested Tradz remove the Dealership Vehicles from its property. TR 18. On or about October 12, 2020, despite not receiving a certificate of title for the vehicle, Tradz resold the 2009 BMW to a private individual. AAP 229-234; TR 20.

Due to the lack of information from Tradz, DMV determined further investigation was necessary. Michael Todd, DMV Deputy Director, contacted Dan O’Brien to confirm the circumstances of removal. TR 64-65.

-
- ii. 2020 Kia was submitted as State’s Exhibit 2 and can be found at AAP 94-108;
and
 - iii. 2019 Kia was submitted as State’s Exhibit 3 and can found at AAP 109-123.

On November 17, 2020, Mr. Todd spoke to Chris Houghton, the dealership's regional sales manager, regarding removal of the Dealership Vehicles. TR 64-67. Mr. Houghton was asked whether he or his staff had ordered the removal of the Dealership Vehicles and he represented that they had not. TR 65-66.

Prior to making this representation, Mr. Houghton discussed the issue with his staff and looked into vehicle removals from not only the dealership's Concord location but also other locations in New Hampshire and Massachusetts. TR 66. He further represented the dealership did not have a relationship with Tradz. TR 66. In the event Dan O'Brien requires towing services, they work exclusively with a tow company located in Pembroke, New Hampshire, and they would not have contacted Tradz. TR 66-67. Mr. Houghton further confirmed the dealership did not contact the Concord Police Department to notify them that the Dealership Vehicles were abandoned. TR 67. Because Tradz did not provide details regarding the removals and DMV was unable to confirm that Dan O'Brien ordered the removals, DMV formally rejected Tradz's title applications for the Dealership Vehicles on November 18, 2020. AAP 93, 108, 123. The rejections explained that DMV confirmed Dan O'Brien neither ordered Tradz to remove the Dealership Vehicles, nor reported the vehicles as abandoned to the local police department. AAP 93, 108, 123.

Despite having failed to satisfy DMV's earlier request for details regarding the removal of the Dealership Vehicles, Tradz, after DMV's rejection (and for the first time as part of the underlying administrative matter), produced a name of a former Dan O'Brien employee that Tradz claimed authorized removal of the Dealership Vehicles. TR 68-69.

According to Tradz, Jason Asbury, an employee of the dealership, authorized Tradz to remove these vehicles and provided Tradz with the factory keys for all three vehicles at the time of removal. TR 75. In light of this development, DMV requested that Automotive Equipment Inspector, Logan Ramsey (“AEI Ramsey”), contact Mr. Asbury to determine if there was additional information available about the removal of these vehicles. TR 69. Contrary to Tradz’s representation, Mr. Asbury informed AEI Ramsey that the Dealership Vehicles were towed from the property with permission from his manager, Andry Gamut. TR 69. While Mr. Asbury recalled the removals, he expressed confusion over the reasons for the removals and indicated the vehicles could have been either abandoned or repossessed. TR 69-70. Tradz did not call Mr. Asbury to testify at the hearing.

The AEI’s investigation also included contact with the owners of the 2019 and 2020 Kia vehicles that were removed from the dealership. TR 70-71. Both owners indicated the vehicles were returned to the dealership under either trade-in or repossession circumstances. TR 70. The owner of the 2019 Kia spoke to the lienholder of the vehicle and learned that the tow from Dan O’Brien was not authorized. TR 71. The owner of the 2020 Kia left the vehicle at the dealership to be repossessed. TR 71-72.

B. HEARING EXAMINER’S ORDER

On December 18, 2020, a hearing examiner issued an order upholding DMV’s denial of each of the ten (10) title applications at issue in the proceedings. AAP 248-255. On January 8, 2021, Tradz filed a motion

for rehearing, AAP 256-264, which was denied by way of order dated January 27, 2021, AAP 269-272.

Ultimately, the hearing examiner was unpersuaded the ten vehicles were abandoned within the meaning of RSA 262:40-a. With respect to the Dealership Vehicles, the hearing examiner expressed doubt that two late model vehicles, the 2019 Kia and 2020 Kia, would be “parked without permission or . . . apparently abandoned” at a Kia dealership. AAP 254. Based on the evidence, the hearing examiner determined the vehicles were parked at the dealership to initiate a repossession. AAP 254, 271. This finding was consistent with the testimony of Tradz’s general manager, Stephan Condodemetraky, who testified that all three Dealership Vehicles were left at Dan O’Brien because the owners could not pay for the vehicles. TR 79.

The hearing examiner acknowledged that the title applications for the Dealership Vehicles indicated the removals were authorized by the “property owner,” but ultimately found that “the preponderance of the evidence is that the tow was not authorized by the ‘property owner.’” AAP 271. The hearing examiner relied upon the fact that DMV’s investigation revealed no record of Dan O’Brien giving notice of removal to a peace officer as required by RSA 262:40-a, I(b) and that Dan O’Brien’s general manager “disavowed any knowledge of the tow or having given anyone the authority to arrange for a tow.” AAP 254, 271. While Tradz’s general manager, Stephan Condodemetraky, testified that Mr. Asbury authorized Tradz to remove these vehicles from the dealership’s property, TR 75, the hearing examiner also heard testimony that Mr. Asbury told DMV he was uncertain as to why the vehicles were removed from Dan O’Brien. TR 69.

As to the vehicles that Tradz acquired through repossessions ordered by lienholders, the hearing examiner found Tradz was making a “concerted effort” to bypass the repossession process in order to sell the vehicles under the Abandoned Vehicle Law. AAP 254. The hearing examiner found this practice would create a conflict among the applicable statutory provisions and that the Abandoned Vehicle Law was not created to make it easier for a tow company to dispose of or resell a vehicle. AAP 254. The hearing examiner explained the Abandoned Vehicle Law creates a mechanism for tow companies to be reimbursed for tow services provided to facilitate the removal of abandoned vehicles. AAP 271. The hearing examiner pointed out that Tradz was never “stuck” with tow fees relating to an abandoned vehicle removal. AAP 271. Based on this reasoning, the hearing examiner generally concluded Tradz could not obtain title under the Abandoned Vehicle Law for vehicles that it repossessed.

With respect to the 2014 BMW, the hearing examiner was not persuaded this vehicle was abandoned within the meaning of RSA 262:40-a. AAP 255, 272. While Tradz claims that a note written by the vehicle owner was evidence of “abandonment” within the meaning of the statute, AB 69-70; TR 87, the hearing examiner disagreed. The hearing examiner determined the note, at most, authorized Tradz to perform a tow. AAP 272. This was insufficient to establish the vehicle was “abandoned” within the meaning of RSA 262:40-a.

For the various reasons above, the hearing examiner upheld DMV’s denial of the ten title applications. On or around February 17, 2021, after its motion for rehearing was denied, Tradz filed a Notice of Appeal with this Court pursuant to Supreme Court Rule 10.

SUMMARY OF THE ARGUMENT

This appeal arises out of a disagreement between DMV and Tradz as to what is appropriate under New Hampshire's Abandoned Vehicle Law. Tradz is a company that performs tow services, including repossessions, but is also licensed as a retail vehicle dealer in the State of New Hampshire. Sometime after the company was formed, Tradz expanded its towing practice to include abandoned vehicle removals and, in October 2019, submitted abandoned vehicle paperwork to DMV for the first time. Since Tradz's first submission, DMV has openly expressed concerns regarding Tradz's business model concerning abandoned vehicles, particularly with respect to Tradz's attempts to obtain title for vehicles that it came to possess by performing repossessions at the direction of lienholders.

Tradz is challenging the hearing examiner's decision to uphold DMV's denial of ten title applications that Tradz submitted under the Abandoned Vehicle Law. Tradz claims the vehicles were all abandoned and removed pursuant to RSA 262:40-a, which permits property owners to cause the removal of vehicles that are "parked without permission or . . . apparently abandoned" on their property. The record establishes Tradz came to possess a majority of the ten vehicles through repossessions it performed pursuant to an agreement with vehicle lienholders. As explained in detail below, repossessed vehicles cannot fall within RSA 262:40-a because they were not removed by order of a private property owner due to being parked without permission or apparently abandoned. They were removed because the vehicle owners defaulted on the terms of a security

agreement and the lienholders exercised their rights to repossess the vehicle.

Tradz contends the vehicles became abandoned after the lienholders disputed or refused to pay the agreed-upon fee for Tradz's repossession services. It is wholly unclear why so many of Tradz's repossession jobs result in payment disputes. Tradz has not provided specific details surrounding the initial repossessions or these alleged disputes. Even assuming Tradz produced evidence that lienholders are in fact disputing or refusing to pay Tradz's fees with such frequency, the Abandoned Vehicle Law does not authorize a tow company to use the abandoned vehicle process to resolve private disputes or to sell abandoned vehicles to recoup costs for conducting repossessions. Tradz's business model of converting repossessed vehicles into abandoned vehicles in order to swiftly sell them at auction to recover fees for services not performed under the Abandoned Vehicle Law plainly does not fit within the overall statutory scheme of the Abandoned Vehicle Law.

The next issue is whether RSA 262:40-a of the Abandoned Vehicle Law should be interpreted to include vehicles "abandoned" by the vehicle's owner on his or her own property. The Law contains a number of provisions that protect the interests of vehicle owners, including notice requirements, a hearing procedure to challenge the reasons and cost for the tow, and hold periods before a vehicle can be sold at auction. If a vehicle owner requests the removal of his or her own vehicle, there is absolutely no need for this comprehensive statutory procedure.

Finally, Tradz challenges the hearing examiner's decision that certain vehicles Tradz claimed to have removed from a licensed dealership

with the permission of a dealership employee did not fall within RSA 262:40-a. To the extent the hearing examiner found these vehicles were parked at the dealership in order to facilitate repossession, repossessions are not abandoned vehicles for the reasons described herein. In addition to this finding, the hearing examiner expressed that the record did not support Tradz's claim that the vehicles were removed at the request of the dealership and therefore the vehicles could not fall within RSA 262:40-a.

If the hearing examiner's decision is reversed and the applications for title are granted, Tradz will undoubtedly continue to engage in highly concerning business practices that are designed to swiftly obtain title to vehicles under the Abandoned Vehicle Law despite having never performed services to trigger application of that Law. The record and the hearing examiner's order clearly establishes that Tradz has an utter disregard for the statutory provisions governing repossessions and its interpretation of the Abandoned Vehicle Law is inconsistent with the overall statutory scheme. The hearing examiner's decision must be upheld.

ARGUMENT

I. STANDARD OF REVIEW

When appealing a decision of the Department of Safety under RSA 541:6, the appellant has the burden to show the hearing examiner's decision was clearly unreasonable or unlawful. In re Jean-Guy's Used Cars & Parts, Inc., 159 N.H. 38, 39 (2009). The decision "shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable." RSA 541:13. Findings of the hearing examiner upon all questions properly before him "shall be deemed to be prima facie lawful and reasonable." Id. This presumption "may be overcome only by a showing that there was no evidence from which he could conclude as he did." Appeal of Regensis Corp., 156 N.H. 445, 451 (2007). "As a fact-finder, the hearing officer was at liberty to accept or reject the testimony before him as he saw fit and his conclusions are entitled to great weight." Id.

In matters of statutory interpretation, this court reviews the hearing examiner's interpretation of a statute de novo. In re Jean-Guy's Used Cars & Parts, Inc., 159 N.H. at 40. When examining the language of a statute, the court will "ascribe the plain and ordinary meaning to the words used" and "will not consider what the legislature might have said, or add language that the legislature did not see fit to include." Id. The court "interpret[s] a statute in the context of the overall statutory scheme and not in isolation. Id.

II. OVERVIEW OF STATUTORY PROCESS FOR REMOVAL AND SALE OF ABANONED VEHICLES

The crux of Tradz's appeal is that the hearing examiner's decision to uphold DMV's denial of the title applications was unlawful because the decision was based on an erroneous interpretation of RSA 262:40-a, I. AB 52-62. Although Tradz's arguments largely focus on the threshold inquiry of whether a vehicle is "abandoned" within the meaning of RSA 262:40-a, a general understanding of the statutory scheme governing abandoned vehicles, including the events that occur after the removal, will aid in understanding what constitutes an "abandoned" vehicle for purposes of RSA 262:40-a, I.

New Hampshire's Abandoned Vehicle Law, which governs the removal and disposal of abandoned vehicles, is set forth in RSA 262:31 through RSA 262:40-c. In order for a tow or storage company, like Tradz, to be able to sell vehicles at auction under the Abandoned Vehicle Law, the vehicle must have first been removed or stored pursuant to RSA 262:33 or RSA 262:40-a. See RSA 262:36-a ("Disposal by Storage Company"). In other words, if a vehicle is not removed or stored under one of these two provisions, the Abandoned Vehicle Law is not triggered and a vehicle may not be disposed of under the statute.

A vehicle may only be removed or stored pursuant to RSA 262:33 if the requirements of RSA 262:32 have been satisfied. RSA 262:32 only pertains to the removal and storage ordered by an "authorized official" under a limited set of circumstances. RSA 262:32 defines an "authorized official" as "any police employee of the division of state police, highway

enforcement officer or other authorized employee of the department of safety, or police officer.” RSA 259:4-a; see RSA 259:1. More simply put, RSA 262:32 can only apply if the removal and storage of a vehicle was caused by an “authorized official.” If RSA 262:32 does not apply, a vehicle cannot be removed or stored pursuant to RSA 262:33. There is no claim that an “authorized official” caused any of the vehicles at issue in this case to be removed by Tradz. Thus, RSA 262:32 and RSA 262:33 are not applicable here.

If RSA 262:32 and RSA 262:33 do not apply, the vehicle will fall within the Abandoned Vehicle Law only if it was removed or stored pursuant to RSA 262:40-a, the provision governing “Vehicles Removed from Private and State Property.”⁸ Tradz claims the vehicles in this case were all removed pursuant to RSA 262:40-a, I, which provides, in relevant part:

The owner or person in lawful possession of any private property . . . on which a vehicle is parked without permission or is apparently abandoned may:

(a) cause the removal of the vehicle in a reasonable manner provided he or she gives notice of such removal to a peace officer as soon as reasonably possible; or

(b) notify a peace officer that he or she wishes to have such a vehicle removed from the property, whereupon the peace officer or another authorized official shall cause the removal of such vehicle pursuant to the

⁸ RSA 262:40-a governs removals from private property and from state-owned park and ride facilities. This case concerns removals from private property. Because state property is not implicated, the statutory provisions concerning same have been intentionally omitted from this brief.

removal, impoundment, and notice procedures required by this subdivision.

RSA 262:40-a, I. Unlike RSA 262:32, removals under RSA 262:40-a are not limited to those caused by authorized officials. This provision provides an avenue for an “owner or person in lawful possession of any private property” to cause the removal or request the removal of a vehicle “parked without permission or apparently abandoned” on such property. See RSA 262:40-a, I. The company performing the removal and storage of an abandoned vehicle is entitled to reasonable charges incurred as a result of such removal. See RSA 262:33; RSA 262:40-a, IV.

After “an authorized official or the owner or person in lawful possession of private property” causes the removal of abandoned vehicle, proper notice of the removal must be given to the registered owner of the vehicle in accordance with RSA 262:34. The tow company is required to store the vehicle for a specific period, calculated based on the model year and/or the value of the vehicle, to allow the owner an opportunity to claim the vehicle. See RSA 262:36-a. If the owner does not claim the vehicle during the statutorily prescribed period, the statute authorizes the tow or storage company to sell the vehicle at a public auction held at the company’s place of business. RSA 262:37.

Prior to holding an auction, however, the company must follow all statutory requirements for noticing the sale - both to the public and to the vehicle owner. See RSA 262:36-a; RSA 262:38. Similar to the hold period, the notice requirements are determined based on the model year or the value of the vehicle. See RSA 262:36-a; RSA 262:38. For all sales of abandoned vehicles, the tow company is required to provide the vehicle

owner with advanced notice of the time and place of the sale. RSA 262:36-a, III; RSA 262:38. If all statutory requirements are met, the company may proceed with the auction. RSA 262:37.

If the vehicle is purchased at auction, the buyer must submit a title application in accordance with the requirements set forth in N.H. Admin. R. Saf-C 1913.01(d) requiring the buyer submit a TDMV 109 form completed by the seller. The form, which is titled “Notice of Compliance Abandoned Motor Vehicles,” requires the seller to provide various information in order to certify compliance with the Abandoned Vehicle Law. See, e.g., AAP 90.

The company holding the auction is entitled to payment of its lien for towing and storage fees and any reasonable expenses incident to the sale. RSA 262:39. To the extent proceeds remain after this payment, the balance is to be paid to the owner or the owner’s legal representative. RSA 262:39. If the proceeds are not claimed within one year, the proceeds are paid into the state treasury. RSA 262:39.

With the full statutory process in mind, DMV will now address Tradz’s individual arguments regarding the hearing examiner’s interpretation of RSA 262:40-a.

III. THE HEARING EXAMINER PROPERLY CONCLUDED THAT THE TEN VEHICLES DID NOT CONSTITUTE ABANDONED VEHICLES WITHIN THE MEANING OF RSA 262:40-a.

The first argument raised by Tradz is that the hearing examiner’s decision must be reversed because RSA 262:40-a lacks a “comprehensive definition of what constitutes an ‘abandoned vehicle.’” AB 52. Tradz asserts the Court must ascribe the “plain and ordinary meaning” of the term

and should look to the “‘common usage’ of the term abandoned by ‘using the dictionary for *guidance*.’” AB 55 (citing K.L.N. Constr. Co. v. Town of Pelham, 167 N.H. 180, 185 (2014) (emphasis added).) Relying almost exclusively on various dictionary definitions of “abandoned,” Tradz describes several factual scenarios it believes demonstrate vehicle abandonment based on the plain and ordinary meaning of the term. AB 56-59. There is no dispute the standalone term “abandon” can encompass a wide range of scenarios. However, Tradz cannot consider the term “abandon” in isolation and must limit its imagination to scenarios that are harmonious with the overall statutory scheme. See Anderson v. Robitaille, 172 N.H. 20, 23 (2019).

This appeal does not require a review of hypothetical factual scenarios to determine whether the hearing examiner’s decision was proper. The question is whether the vehicles at issue were abandoned vehicles within the meaning of RSA 262:40-a, I based on the circumstances surrounding the removal of those vehicles. For purposes of the issues on appeal, the vehicles can easily be broken down into three categories:

1. Vehicles that Tradz repossessed on behalf of lienholders that Tradz claims became “abandoned” after the repossession occurred but while still in Tradz’s custody. This scenario encompasses at least six of the ten vehicles: (1) 2019 Subaru, (2) 2012 Chrysler, (3) 2013 Hyundai, (4) 2019 Hyundai, (5) 2008 Chevrolet, and (6) 2000 Chevrolet;
2. A vehicle Tradz claims to have removed from the vehicle owner’s property at the request of the vehicle owner. This scenario implicates only one vehicle (2014 BMW); and

3. Vehicles Tradz claims were abandoned by the vehicle owner on another's private property and removed by Tradz the request of the private property owner. This scenario implicates three vehicles (2009 BMW; 2020 Kia; 2019 Kia ("Dealership Vehicles")).

Following a hearing on December 4, 2020, the hearing examiner concluded that each category of vehicles were not "abandoned" within the meaning of RSA 262:40-a. AAP 248-255, 269-272. For the reasons set forth below, Tradz has failed to establish that the hearing examiner's decision to uphold DMV's title denials was unlawful or unreasonable.

A. Repossessions by order of a lienholder cannot constitute an abandoned vehicle.

It is undisputed that at least six of the vehicles were removed by Tradz by order of the vehicle lienholder, *i.e.* six of these vehicles started as repossessions. AB 46; AAP 62. Tradz contends that although these vehicles may have started as repossessions, the vehicles transformed into abandoned vehicles under RSA 262:40-a, I when the lienholders disputed or refused to pay Tradz the agreed upon fees for the repossession or to claim the vehicle under the statutory process that occurs prior to an abandoned vehicle auction. AB 46, 63. Tradz asserts the repossessed vehicles were eligible to be sold under the Abandoned Vehicle Law after the statutory requirements for abandoned vehicle sales were satisfied. AB 66-68. Not only does Tradz's interpretation belie common sense, it ignores the law governing repossessions.

- i. A tow company cannot elect to treat a repossession as an abandoned vehicle because repossessions are clearly distinct from the removal and disposal of abandoned vehicles under New Hampshire Law.**

While repossessions and abandoned vehicles are both included within RSA chapter 262, repossessions are distinct from the abandoned vehicle practices. See RSA 262:3-a. “Repossess” is defined as “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.” RSA 259:87-a. As discussed above, in order for the Abandoned Vehicle Law to apply, the abandoned vehicle removal must be caused by an “authorized official” as defined by RSA 259:4-a or at the request of an owner of private property on which a vehicle is parked without permission or apparently abandoned. See RSA 262:33; RSA 262:40-a, I. A lienholder certainly does not meet the statutory definition of “authorized official,” nor are lienholders requesting removal of vehicles parked without permission or that appear abandoned on the lienholder’s property. A repossession is the lienholder’s act of obtaining physical possession of a motor vehicle because of a breach of the security agreement for the vehicle. See RSA 259:87-a. In contrast, the Abandoned Vehicle Law is concerned with where a vehicle is physically located and generally authorizes the removal of vehicles parked without permission or are parked in an area that impedes access or poses a hazard. See RSA 262:32; RSA 262:40-a.

There is no overlap in the statutory procedures for removals of repossessions and abandoned vehicles. The initial notification process for

repossessions differ from the removal notices required for abandoned vehicles. Compare RSA 262:3-a (requiring notice of repossession be given to law enforcement within 2 hours after repossession), with RSA 262:40-a (landowners causing removal of abandoned vehicles must notify a “peace officer as soon as reasonably possible”) and RSA 262:34 (outlining procedure for providing notice to vehicle owner). As noted above, a tow or storage company must take numerous steps in order to sell an abandoned vehicle at auction. See RSA 262:36-a (setting forth the period a vehicle must be held before disposal and the notice required prior to disposal); RSA 262:38 (detailing the requirements for notice to the public and the vehicle owner of the abandoned vehicle auction); RSA 262:39 (treatment of proceeds from the sale of an abandoned vehicle).

The provisions governing sales of abandoned vehicles do not apply to repossessions. A lienholder’s right to repossess and sell a vehicle after a debtor’s breach of a security agreement is subject to Article 9, Part 6 of the Uniform Commercial Code, which governs defaults and enforcement of security interests. See RSA 382-A:9-600, et seq. If the lienholder did in fact elect to exercise its right to repossess a vehicle due to nonpayment, the lienholder is required by law to provide certain process to the debtor prior to disposing of the vehicle. See id. Yet Tradz would like DMV and this Court to believe lienholders are repeatedly breaching statutory requirements by simply deciding they no longer want the very vehicles they hired Tradz to repossess and are essentially giving those vehicles away without providing any formal process to their debtors. Tradz acknowledges the statutory and regulatory requirements for obtaining title to repossessed vehicles differ from those to obtain titles to abandoned vehicles. AB 63.

Nonetheless, Tradz has created a business model that ignores these differences. To construe the Abandoned Vehicle Law as encompassing repossessions would render the separate statutory provisions governing repossessions and the protections afforded to debtors meaningless.

ii. Tradz LLC is attempting to title vehicles under the Abandoned Vehicle Law despite the vehicles never having been removed or stored under the Abandoned Vehicle Law.

While it is clear from the statutory language that removing and disposing of abandoned vehicles is distinct from repossessions, a closer look into Tradz's practices further reveals the unreasonable fictions Tradz creates by attempting to shoehorn repossessions into the abandoned vehicle process. When Tradz applied for titles for the six repossessed vehicles that it purchased from itself at auction, Tradz submitted a Notice of Compliance form (TDMV 109) for each vehicle in order to certify that it complied with all requirements under the Abandoned Vehicle Law prior to auctioning the vehicle. AAP 128, 138, 144, 172, 185, 194. On each form, Tradz represented to DMV, under the penalties of perjury, that these abandoned vehicles were removed to its place of business by order of the vehicle lienholders. AAP 128, 138, 144, 172, 185, 194. However, Tradz never claims that any of the lienholders initiated or requested a subsequent removal under RSA 262:40-a after Tradz completed the repossession. Rather, Tradz's claim is that lienholders order repossession of a vehicle but then simply "abandon" the vehicle immediately after Tradz completes that same repossession. Nevertheless, Tradz then fills out the TDMV 109 and represents that the initial repossession order now doubles as a removal of an

abandoned vehicle. Tradz simply decides to change the lienholder's request for repossession into an abandoned vehicle removal in order to swiftly sell and title vehicles under a statutory scheme that is not designed to encompass repossessions. The hearing examiner found this practice to be in conflict with the legislature's intent behind the Abandoned Vehicle Law. AAP 254.

It is undisputed the Abandoned Vehicle Law creates a mechanism for tow companies to recover the reasonable costs and fees associated with removing and storing an abandoned vehicle. According to Tradz, it accepts repossession jobs, often at a fixed rate, prior to repossessing a vehicle and, for reasons still unknown to DMV, all six of the undisputed repossessions in this case managed to result in payment disputes with the lienholders. After these disputes arise, Tradz, by its own admission, uses the Abandoned Vehicle Law to recover the costs and fees associated with its *repossession* of the vehicle. AB 64; TR 95-98. Tradz is simply attempting to disguise a private contract dispute as an abandoned vehicle issue in order to collect fees and costs without formally resolving the dispute and without regard to debtor's rights under the law governing repossessions. There is absolutely no authority in the statute or cited in Tradz's brief to suggest that the Abandoned Vehicle Law was intended to create a mechanism for tow companies to collect repossession fees or to resolve disputes arising from repossessions.

The statute is designed to incentivize tow companies to perform abandoned vehicle removals. Unlike in a repossession, where the tow company contracts with a lienholder to perform a repossession, the tow company removing an abandoned vehicle is doing so at the request of a

qualifying landowner or “authorized official.” See RSA 262:31; RSA 262:40-a. Neither the landowner nor the authorized official, *i.e.*, law enforcement, are entering into a promise to pay the tow company for those services. The owner of the vehicle that is parked without permission or apparently abandoned is the individual ultimately responsible for payment to the tow company and, in the event of non-payment, the owner risks suspension of his or her vehicle registration and driving privileges. See RSA 262:33; RSA 262:40-a, IV; RSA 262:40-c.

In an attempt to justify its practices, Tradz argues a repossession can transform into an abandoned vehicle because “abandonment” cannot be “conclusively determined until after the notification process to the lienholder and owner is completed and no one claims or retrieves the vehicle thereafter.” AB 63. Tradz’s argument ignores the Abandoned Vehicle Law’s entire statutory scheme. In order for a removal to be authorized under RSA 262:40-a, the vehicle must be “parked without permission or . . . apparently abandoned.” RSA 262:40-a, I. In other words, the abandonment status occurs *prior* to removal. Abandonment is what triggers the need for a tow company’s services under the Abandoned Vehicle Law. If such services are performed, the Abandoned Vehicle Law then provides a mechanism for a tow company to recover the costs and fees associated with the removal and storage of that vehicle. If the vehicle is not claimed within the statutory period, the tow company may recover its costs and fees by selling the vehicle at auction. RSA 262:37 (authorizing sale of abandoned vehicle at auction if all requirements are met). Its recovery is limited to the costs and fees of performing abandoned vehicle services. RSA 262:39 (authorizing application of sale proceeds to outstanding

removal fees and requiring that any remaining proceeds be paid to the owner). According to Tradz, it has the right to sell vehicles under the Abandoned Vehicle Law despite never performing the service of removing an abandoned vehicle. If Tradz never performed a removal under the Abandoned Vehicle Law, the mechanism to recover fees for those services, including the disposal provisions, cannot be triggered as a matter of law.

For these reasons, the hearing examiner did not act unlawfully or unreasonably in deciding to uphold the title denials for the repossessed vehicles that Tradz improperly attempted to sell under the Abandoned Vehicle Law. Accordingly, this court must affirm.

B. The abandoned vehicle law does not encompass the vehicle “abandoned” by the vehicle owner on the vehicle owner’s property.

The next question on appeal is whether a vehicle owner can use the Abandoned Vehicle Law to abandon his or her own vehicle on his or her own property. This issue implicates only the 2014 BMW. According to Tradz, while performing a repossession in Massachusetts, Tradz also removed the 2014 BMW by order of Beverly Wilson, the vehicle owner. TR 86-87. Tradz asserts the 2014 BMW was “abandoned” when the owner requested Tradz remove the vehicle from the owner’s private property.⁹ AB

⁹ During the administrative proceedings and on appeal, however, Tradz asserts the removal of the 2014 BMW was requested by the vehicle owner under RSA 262:40-a. AAP 61-62, AB According to an email from Tradz dated January 25, 2020, Tradz actually removed the vehicle pursuant to RSA 262:32, IV, which provides that an “authorized official” can cause the removal of a vehicle if “[t]he owner or legal occupant of private property has complained that a vehicle is obstructing the passage of vehicles from a public street or highway onto the driveway of such private property.” AAP 226.

68. As evidence of this abandonment, Tradz submitted a handwritten letter from the vehicle owner in which she appears to authorize Tradz to tow the vehicle. AAP 82. The hearing examiner was not persuaded that this letter was evidence of “abandonment” for purposes of RSA 262:40-a. AAP 272. The hearing examiner construed the letter to be nothing more than authorization by the vehicle owner for Tradz to conduct a tow and that this scenario did not fall within the intended purpose of the statute. AAP 272. For this reason alone, the hearing examiner’s decision with regard to the 2014 BMW should be upheld. Even assuming Tradz submitted evidence that the owner intended to “abandon” her 2014 BMW, a vehicle which was subject to a lien and located in Massachusetts at the time of the removal, Tradz’s title application for this vehicle was properly denied because such abandonment would not be covered by New Hampshire’s Abandoned Vehicle Law.

On appeal, Tradz argues the hearing examiner erred by implicitly holding that a vehicle owner cannot abandon his or her own vehicle under the Abandoned Vehicle Law. AB 68. In making this argument, Tradz describes generally a person’s ability to abandon or relinquish ownership of his or her personal property and cites to case law outside the context of the Abandoned Vehicle Law. AB 68-73. The question, however, is not whether an owner can decide to abandon or give up ownership to his or her vehicle. Rather, assuming there is sufficient evidence to establish that an owner desires to give up the vehicle, the relevant question is whether that act

Tradz then cites various other provisions of RSA 262:32 that it believes might also govern the removal. AAP 226.

renders it an “abandoned vehicle” within the meaning of RSA 262:40-a. For the reasons below, interpreting the Abandoned Vehicle Law to include vehicles that are removed by order of the vehicle owner from the owner’s private property would be an illogical application of the statute.

RSA 262:40-a, I provides an avenue for “[t]he owner or person in lawful possession of any private property” to cause the removal or request the removal of a vehicle “parked *without permission* or *apparently abandoned*” on such property. Tradz does not argue that a property owner can park his or her own vehicle on his or her own property without permission. Rather, Tradz’s argument appears to be that a vehicle owner can simply decide he or she no longer wants the vehicle and transfer ownership simply by requesting removal under the Abandoned Vehicle Law. AB 70-73.

As a principle of common sense, it should go without saying that vehicle owner does not need the Abandoned Vehicle Law to cause the removal of his or her own vehicle. If the vehicle owner wants the vehicle removed, the vehicle owner can simply contact a tow company, arrange for tow services, and pay the tow company for the costs associated with the tow. The Abandoned Vehicle Law, however, allows a tow to be arranged by someone other than the vehicle owner, either a private property owner or an authorized official, if the vehicle is parked in violation of the Law. See RSA 262:33; RSA 262:40-a. Rather than holding the private property owner or authorized official responsible for the costs of that tow, the Abandoned Vehicle Law holds the registered vehicle owner responsible for the costs and creates a mechanism for the tow company to recover payment from the vehicle owner despite the owner not hiring the tow company to

perform the services. The hearing examiner explained that this statutory scheme encourages tow companies to perform abandoned vehicle removals by protecting their ability to recoup the costs and fees for performing those services. AAP 271-272.

As Tradz acknowledges, this statute does more than just protect the interests of tow companies. AB 59. The statutory scheme facilitates the removal of abandoned vehicles while protecting the interests of both vehicle owners and tow companies. The procedures in RSA chapter 262 are 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. See generally RSA 262:31–262:40-a. This protective scheme becomes wholly unnecessary when a vehicle owner is simply giving away their vehicle as Tradz claims.

Allowing the vehicle owner to “abandon” the vehicle on his or her own property would impose ridiculous statutory requirements on both the tow company and the vehicle owner. If vehicle owners could trigger removal of their own vehicles on their own property under the Law, the vehicle owner would be required to provide notice to himself or herself that the vehicle was removed. RSA 262:34. The tow company would be required to hold the vehicle for the requisite statutory period so the vehicle owner that purportedly gave up ownership of the vehicle has an opportunity to reclaim that same vehicle, except the vehicle would now be subject to the company’s lien for towing and storage costs. If the vehicle owner does not reclaim the vehicle that it sought removal of, the tow company must go

through the statutory process to sell that vehicle at auction, an auction which the vehicle owner must get notice of. RSA 262:36-a; RSA 262:38.

Owner-initiated removals are not only inconsistent with the purpose of the Abandoned Vehicle Law, Tradz's attempt to force the retitling of such vehicles through the sale process set forth in the Abandoned Vehicle Law is at odds with the laws governing motor vehicle titles. If the owner of the vehicle no longer wants the vehicle and intends to give up its interest, it must do so in accordance with RSA chapter 261, the chapter governing certificates of title. Generally, voluntary transfers of motor vehicles require an executed assignment of the owner's certificate of title and the transfer is subject to existing security interests.¹⁰ See RSA 261:14. Despite its repeated claim that these owners are willingly giving up ownership to their vehicles by asking Tradz to tow the vehicle away, Tradz seeks to cause the involuntary transfer of title through an abandoned vehicle auction. See RSA 261:16. Such a practice is not contemplated by the Abandoned Vehicle Law or the laws governing motor vehicle titles.

For the reasons above, Tradz has failed to establish that the hearing examiner acted unlawfully or unreasonably in upholding DMV's denial of the title application for the 2014 BMW. Accordingly, the decision must be affirmed.

C. The evidence did not support a finding that the vehicles removed from Dan O'Brien Kia were removed at the request of a private property owner.

¹⁰ Important to note is Tradz's abandoned vehicle paperwork listed existing lienholders for all ten vehicles.

Although Tradz is appealing the hearing examiner's decision with respect to all title denials, Tradz dedicates little discussion to the Dealership Vehicles removed from Dan O'Brien. At the outset of its brief, Tradz summarizes the facts it relies upon in arguing that these vehicles were abandoned within the meaning of RSA 262:40-a. AB 45-46. The hearing examiner did not find Tradz's version of events relating these vehicle removals credible and rejected Tradz's claim that these vehicles were removed at the request of a private property owner. AAP 254, 271.

Tradz contends it received authorization from Mr. Asbury, an employee of Dan O'Brien, to remove the Dealership Vehicles. AB 45-46; TR 75. While Tradz claims Mr. Asbury authorized the removal of these vehicles, DMV's investigation revealed that Mr. Asbury did not know why the vehicles were removed and he expressed confusion because they were owned by the bank. TR 105. Notably absent from the record is any testimony or evidence to suggest that Dan O'Brien considered these vehicles to be "parked without permission or . . . apparently abandoned" as contemplated by RSA 262:40-a. The hearing examiner determined, and Mr. Condodemetraky seemed to agree, these vehicles were left at the dealership to be repossessed. AAP 254, 271; TR 79. These factual findings are "deemed to be prima facie lawful and reasonable," RSA 541:13, and are entitled to great deference.

The hearing examiner found it difficult to believe Tradz's representation that two late model Kia vehicles were simply abandoned or parked without permission at Dan O'Brien. AAP 254. The hearing examiner heard testimony that the owners left these vehicles at the dealership under circumstances of a trade-in or repossession. TR 70-72.

Ultimately, the hearing examiner concluded Tradz made “a concerted effort to try to turn a repossession process into an abandoned vehicle.” AAP 254. As discussed in detail above, repossessions do not qualify as abandoned vehicles under the Law.

Because Tradz has failed to establish by a clear preponderance of the evidence that the hearing examiner’s decision was unjust or unreasonable, the decision to uphold DMV’s denial of the title applications for the vehicles removed from Dan O’Brien Kia must be affirmed.

IV. THE HEARING EXAMINER PROPERLY DETERMINED THAT THE ISSUE OF A TITLE APPLICATION FOR A VEHICLE THAT TRADZ NO LONGER POSSESSES IS MOOT.

Tradz’s final argument is that the hearing examiner erred in determining that this matter is “moot.” AB 74-77. As a threshold matter, Tradz has not presented in the Notice of Appeal. NOA 3-4. “While the statement of a question need not be worded exactly as it was in the appeal document, the question presented shall be the same as the question previously set forth in the appeal document.” Sup. Ct. R. 16(3)(b). More specifically, the Notice of Appeal did not raise any question regarding the hearing examiner’s determination regarding mootness.

Nevertheless, even if this court is inclined to consider this issue, Tradz’s arguments on appeal go far beyond any matter decided by the hearing examiner. Despite noting that the hearing examiner’s finding regarding mootness applied to only one vehicle, Tradz unnecessarily argues at the length that this matter as a whole should be deemed not moot. AB 74-

77. Because the hearing examiner did not find that this entire matter was moot, such arguments need not be addressed.

Further, Tradz has failed to establish the hearing examiner erred in any way. “Generally, a matter is moot when it no longer presents a justiciable controversy because issues involved have become academic or dead.” N.H. Ass’n of Counties v. State, 158 N.H. 284, 292 (2009). A “case remains justiciable only to the extent remedies remain available to [the plaintiff].” ATV Watch v. N.H. Dept. of Res. & Econ. Dev., 155 N.H. 434, 437 (2007).

The hearing examiner’s finding regarding mootness was limited to a title application for a specific vehicle, the 2009 BMW removed from Dan O’Brien. AAP 254-255. To the extent Tradz is challenging the hearing examiner’s limited determination, Tradz does not make any specific arguments as to how the hearing examiner erred. It is undisputed Tradz resold the 2009 BMW prior to the administrative hearing on December 4, 2020. For this reason, the hearing examiner indicated the issue of title for this particular vehicle was moot. AAP 254. Because Tradz has resold the vehicle and no longer claims to own or be in possession of the vehicle, the requested relief, *i.e.*, issuance of a certificate of title to Tradz as proof of ownership of that vehicle, cannot and should not be granted to Tradz. Moreover, the 2009 BMW was one of three vehicles removed from Dan O’Brien. Tradz has failed to identify any justiciable controversy unique to the 2009 BMW that will evade review if the hearing examiner’s decision regarding mootness is not reversed.

In light of the above, Tradz has failed to demonstrate that the hearing examiner acted unlawfully or unreasonably when it determined that Tradz’s

appeal of the 2009 BMW title denial was moot. The decision must be affirmed.

CONCLUSION

For the foregoing reasons, DMV respectfully requests that this Honorable Court affirm the hearing examiner's decision to uphold DMV's denial of the ten title applications submitted by Tradz under the Abandoned Vehicle Law.

DMV requests a fifteen-minute oral argument to be presented by Assistant Attorney General Christina Wilson.

Respectfully Submitted,

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF SAFETY
DIVISION OF MOTOR VEHICLES

By Its Attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

November 15, 2021

/s/ Christina M. Wilson
Christina M. Wilson, Bar No. 268553
Assistant Attorney General
Transportation and Construction Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3675

CERTIFICATE OF COMPLIANCE

I, Christina M. Wilson, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 9,135 words, excluding the table of contents and table of authorities, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

November 15, 2021

/s/ Christina M. Wilson
Christina M. Wilson

CERTIFICATE OF SERVICE

I, Christina M. Wilson, hereby certify that I am filing this brief electronically and that a copy is being served on all other parties or their counsel, in accordance with the rules of the Supreme Court, as follows: I am serving registered e-filers through the court's electronic filing system.

November 15, 2021

/s/ Christina M. Wilson
Christina M. Wilson