

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D21-2643

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HUBERT TILLMAN d/b/a SHOW  
TIME AUTO CENTER,

Appellant,

v.

DEPARTMENT OF HIGHWAY  
SAFETY AND MOTOR VEHICLES,

Appellee.

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On appeal from the Department of Highways Safety and Motor  
Vehicles.

Robert Kynoch, Director of Motorist Services.

February 15, 2023

OSTERHAUS, J.

In 2021, the Department of Highway Safety and Motor Vehicles issued a final order fining car dealer Hubert Tillman \$76,000 for failing to lawfully report and keep records of his issuance of temporary license plates as required by statute and administrative rule. Tillman's appeal claims that he should have received a formal administrative hearing below. We affirm because he waived this issue.

Section 320.131, Florida Statutes, authorizes the Department to administer a system for dealers to issue temporary license

plates, as well as for the Department to penalize licensees who don't comply with the system. The system requires strict reporting on the usage of temporary plates. Rule 15C-16.006(1), Florida Administrative Code, for instance, requires that "[e]very motor vehicle dealer licensed under Chapter 320, F.S., shall report all temporary plate transfers via the ETR [Electronic Temporary Registration] system, a tax collector's office, or a license plate agency prior to the license plate being placed on a newly acquired vehicle." Section 320.131(7) further requires dealers to maintain records regarding their issuance of such plates, which are subject to inspection by the Department.

In Tillman's case, following the Department's filing of an administrative complaint and a subsequent informal hearing, a hearing officer issued a recommended order concluding that he had violated state reporting and record-keeping requirements. The hearing officer recommended a \$1,000-per-violation fine. *See* § 320.27(12), Fla. Stat. (authorizing the Department to levy civil fines up to \$1000 per violation). After Tillman filed no exceptions to the recommended order, the Department issued a final order adopting the hearing officer's recommendation. Tillman then appealed.

Tillman focuses his appellate argument on his hearing rights. He claims that he failed to receive a formal evidentiary hearing as required by the statute where there are disputed issues of fact. The parties to an administrative complaint may choose to have a formal administrative hearing under § 120.57(1), or an informal administrative hearing under § 120.57(2). "Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact." § 120.569(1), Fla. Stat. A section 120.57(2) informal hearing applies in most other cases. "If a disputed issue of material fact arises during a proceeding under s. 120.57(2), then, unless waived by all parties, the proceeding under s. 120.57(2) shall be terminated and a proceeding under s. 120.57(1) shall be conducted." § 120.569(1), Fla. Stat.

In this case, no party requested a formal hearing nor clearly identified the existence of a disputed issue of material fact. Rather, Tillman communicated the opposite by signing and filing an election of rights form supplied by the Department that specifically

waived his formal hearing rights in response to the administrative complaint. Tillman's election stated: "**I do not dispute the allegations** of material fact in the Administrative Complaint. By making this election, I waive my right to a Section 120.57(1), Florida Statutes, formal administrative hearing in front of an administrative law judge at the Division of Administrative Hearings. I wish to submit oral and (or) written evidence in mitigation at a Section 120.57(2), Florida Statutes, informal hearing before any penalty is imposed. . . ." Along with this election Tillman submitted an unsigned hearing petition disputing facts related to whether some tags were late but did not request a § 120.57(1) formal hearing. Thereafter, Tillman did not object when the informal hearing was scheduled and took place, nor apprise the hearing officer of his request for a formal hearing. Then, once the hearing officer issued a recommended order, Tillman filed no exceptions, nor raised any procedural objections.

In sum, Tillman had the opportunity to seek a formal hearing but failed to do so. His election of an informal hearing in response to the administrative complaint and subsequent failure to request a formal hearing waived his right to a formal hearing. *See Rosenzweig v. Dep't of Transp.*, 979 So. 2d 1050, 1052, 1056 (Fla. 1st DCA 2008) (finding the right to a formal hearing waived because a formal hearing had not been requested); *Walker v. Fla. Dep't of Bus. & Prof'l Regulation*, 705 So. 2d 652, 653–54 (Fla. 5th DCA 1998) (finding licensee to have waived any right to a formal hearing under § 120.57(1) by filing an election of rights form requesting an informal hearing).

AFFIRMED.

RAY and NORDBY, JJ., concur.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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Donald E. Pinaud, Jr. of All Florida Justice, LLC, Jacksonville, for Appellant.

Christie S. Utt, General Counsel, and Mark L. Mason, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, Tallahassee, for Appellee.