

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Philip Richard Garland, :
Petitioner :
 :
v. :
 :
Department of State, Bureau of :
Professional and Occupational Affairs, :
State Board of Vehicle Manufacturers, :
Dealers and Salespersons, : No. 842 C.D. 2008
Respondent : Submitted: September 5, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: November 6, 2008

Philip Richard Garland (Garland) petitions this court for review of an order of the State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) that found Garland violated Section 19(4) of the Board of Vehicles Act (Act)¹ and revoked his vehicle salesperson license.

On March 23, 2007, the Department of State, Bureau of Professional and Occupational Affairs (Bureau) filed an Order to Show Cause (OSC) alleging that Garland was subject to discipline under Section 19(4) of that Act as a result of pleading guilty to a felony crime involving moral turpitude on July 21, 2005. On November 13, 2007, Garland filed an answer to the OSC which acknowledged that he was convicted and averred facts in mitigation of a sanction. A hearing before

¹ Act of December 22, 1983, P.L. 306, No. 84, *as amended*, 63 P.S. § 818.19(4).

the Board was held on February 5, 2008. Garland did not attend the hearing, but his attorney appeared on his behalf.

On April 7, 2008, the Board issued an adjudication and order and revoked Garland's salesperson license. The Board found the following facts, in part:

1. Respondent [Garland] is currently the holder of a vehicle salesperson license in the Commonwealth of Pennsylvania, license number MV-156732-L. (Board records)

2. Respondent's vehicle salesperson license expired on May 31, 2005, and may be renewed upon request and payment of the appropriate fee. (Board records)

3. Respondent's vehicle salesperson license was originally issued on February 9, 2000. (Board records)

....

5. On or about July 21, 2005, in the United States District Court for the Eastern District of Pennsylvania . . . Respondent pled guilty to one felony charge of Conspiracy to Make False Statements to HUD to Obtain a Loan and aiding and abetting the commission of that offense [in violation of 18 U.S.C. § 371]

6. On or [sic][about] July 21, 2005, Respondent was sentenced to undergo imprisonment for a period of not less than eighteen months followed by 36 months of probation, to perform 80 hours of community service, payment of a civil settlement of \$1,150,000.00, and ordered to pay the United States a special assessment of \$100.00

Board's Adjudication and Order, April 7, 2008, Findings of Fact (F.F.) Nos. 1-3, 5-6 at 2; Reproduced Record (R.R.) at 51a. The Board concluded that Garland was "subject to disciplinary action under Section 19(4) of the Act, based upon his

conviction for Conspiracy to Make False Statements to HUD to Obtain a Loan and aiding and abetting the commission of that offense, which is a crime involving moral turpitude, while his salesperson license was in force.” Board’s Adjudication and Order, Conclusion of Law No. 3 at 3; R.R. at 52a.

On appeal,² Garland raises a single issue. Garland contends that the Board erred when it concluded he was a vehicle salesperson who was subject to sanction pursuant to Section 19(4) of the Act because he had not pled guilty to a crime involving moral turpitude within five years prior to the application for, or issuance of, his license or while his current license was in force.

Section 19(4) of the Act provides that the Board is authorized to “formally reprimand, suspend or revoke any license or refuse to issue or renew any license of an applicant or licensee” who:

Being a vehicle dealer or salesperson, having within five years prior to the application for or issuance of a license or while his current license is in force pleaded guilty, entered a plea of nolo contendere or been found guilty in a court of competent jurisdiction in this or any other state or Federal jurisdiction of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, bribery, odometer tampering or any other crime involving moral turpitude.

² This Court’s review is limited to a determination of whether the Board violated the licensee’s constitutional rights, committed an error of law, or based its conclusion on necessary findings of fact that were not supported by substantial evidence. Maggiano v. Pennsylvania State Board of Vehicle Manufacturers, Dealers and Salespersons, 659 A.2d 1071, 1074 (Pa. Cmwlth. 1995).

There is no dispute that the offense to which Garland pled guilty involves a crime of moral turpitude. Board Hearing, February 5, 2008, at 8-9; R.R. at 25a-26a.

The current controversy centers on the statute's language which requires that the conduct must occur within either of two time frames: first, during the period within five years prior to the application for, or issuance of, a license, or second, during the period when the license is "current" and "in force."

Garland's conduct did not occur within the first time frame required by statute. Garland's license had been issued on February 9, 2000. As the Board stated in its adjudication and order, it must "look back five years prior to that date." Board's Adjudication and Order at 6; R.R. at 56a. As Garland argues, the look-back period is from February 9, 2000, back to February 9, 1995. Garland entered his guilty plea on July 21, 2005. It is evident that Garland was not a vehicle salesperson who pled or was found guilty within five years prior to application for, or issuance of, his license.

The salient issue becomes whether Garland's license was "current" and "in force" such that Section 19(4) of the Act controls and the Board had authority to sanction him.

The Board cited to Nicoletti v. Pennsylvania Board of Vehicle Manufacturers, Dealers and Salespersons, 706 A.2d 891, 893 (Pa. Cmwlth. 1998), to conclude that Garland was subject to discipline under Section 19(4) of the Act on the basis that his vehicle salesperson "license was still in force [at the time of

his conviction] because he had a property interest in the license and could have renewed it at any time by simply paying the proper licensing fees.” Board’s Adjudication and Order at 6; R.R. at 56a (emphasis added).

In Nicoletti, Daniel A. Nicoletti (Nicoletti) had a vehicle salesperson license that went unrenewed and a dealer license that had been suspended on July 20, 1990. After Nicoletti’s dealer’s license was suspended he closed the dealership and filed for bankruptcy protection. On February 11, 1993, Nicoletti pled guilty to one count of conspiracy to defraud and two counts of mail fraud. These charges resulted from an insurance fraud scheme beginning in June 30, 1986, through February 1, 1991, in which persons delivered vehicles to Nicoletti’s dealership and reported the vehicles as stolen. Nicoletti directed employees to remove the vehicle identification number from the “stolen” automobiles, and replace it with the identification numbers of vehicles under his control. On the basis of his conviction, the Bureau sent Nicoletti a Notice to Show Cause on May 20, 1994. A hearing was held and the Board entered an order revoking both Nicoletti’s salesperson’s and dealer’s licenses.

Nicoletti raised two jurisdictional challenges to the Board’s revocation of his salespersons license: (1) “he could not be subject to the imposition of penalties by the Board because his salesperson license had not been renewed prior to its revocation”; and (2) “his conviction(s) . . . should not be considered because they occurred after his salesperson’s license lapsed” Id. at 893-94. In regards to the first issue, this Court determined:

Nicoletti could have renewed his salesperson’s license at any time prior to the Board’s action by simply paying the

proper licensing fees. Because Nicoletti had acquired *the right* to sell and deal in automobiles, he maintained a property interest in his license such that the Board could revoke the right. Brady v. State Board of Chiropractic Examiners, 79 Pa. Cmwlth. 608, 471 A.2d 572, *appeal dismissed*, 506 Pa. 83, 483 A.2d 1376 (1984).

Id. at 893. This Court’s resolution of the first issue dictated the conclusion as to the second issue: “Nicoletti still maintained a property interest in the license[] and thus falls within the jurisdiction of the Board.” Id.

The facts in Nicoletti are similar to the facts here. Nicoletti argued that he was not subject to disciplinary action by the Board because his criminal convictions occurred after his vehicle salesperson license lapsed. Here, Garland argues that he was not subject to discipline because his conviction on July 21, 2005, occurred after the expiration of his vehicle salesperson license on May 31, 2005. Garland, however, argues that in deciding Nicoletti this Court did not rule on the issues of statutory construction raised in this appeal. Garland argues that in considering the applicability of Section 19(4) of the Act in Nicoletti, this Court paraphrased the language of the statute and omitted the phrase “current license [that] is in force” which distinguishes his situation. This Court disagrees.

In Nicoletti, the phrase “current license [that] is in force” was omitted when paraphrasing the statute; however, this Court paraphrased the statute to specifically address a sub-issue raised by Nicoletti concerning whether his crimes were “associated with his status as licensee under the Act.” Id. In Nicoletti, this Court disposed of the issues relevant to the current controversy by determining that the Board had jurisdiction to revoke Nicoletti’s license because he had a property

interest in his unexpired salesperson's licenses. For purposes of our review, Nicoletti controls.

Under the reasoning employed by this Court in Nicoletti, Garland maintained a property interest in his vehicle salesperson license because he could have renewed his license any time prior to the Board's revocation by paying the proper licensing fees. In light of Nicoletti, an expired vehicle salesperson license qualifies as a "current license [that] is in force" because the expiration of the license does not impair its efficacy since it may be renewed by paying the proper licensing fees. On this basis, the Court must conclude that the Board had the authority to revoke Garland's license under Section 19(4) of the Act because he was convicted of a crime involving moral turpitude at a time when the status of his vehicle salesperson license was a "current license [that] is in force" for purposes of the statute.

Accordingly, the order of the Board is affirmed.

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 6th day of November, 2008, the order of the State Board of Vehicle Manufacturers, Dealers and Salespersons is affirmed.

BERNARD L. MCGINLEY, Judge