

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
REGULATION AND ENFORCEMENT DIVISION**

IN THE MATTER OF:)	
)	Administrative Proceeding
Joel Necaise)	Number: <u>M-12-0315</u>
5 Bain Bridge Circle)	
Long Beach, MS 39560)	Metals Registration
)	No.: Not Registered
<i>Respondent</i>)	

FINAL ORDER

This cause came before the hearing officer for a hearing on May 9, 2012. On May 23, 2012, the appointed Hearing Officer submitted his Findings of Fact and Conclusions of Law, attached as Exhibit A. Respondent, Joel Necaise did not submit comment on the Hearing Officer's findings by the date of this Order. Therefore, the above-styled cause stands ready for final adjudication via this Final Order.

FINDINGS OF FACT

1. The Secretary of State has the authority to administer and to provide for the enforcement of all provisions of the Mississippi Scrap Metal Property Dealer Registration Act (hereinafter "Act"), Mississippi Code Annotated Section 97-17-71, *et seq.*, which regulates the purchase of regulated metals in the State of Mississippi.
2. As a purchaser of regulated metal property, Joel Necaise (hereinafter "Necaise") is subject to the requirements of the Act and regulations promulgated thereunder.
3. In the Notice of Hearing sent to Necaise on April 20, 2012, the following violations of the Act were alleged:

- a. Respondent purchased regulated metal while not being a registered metal dealer with the Secretary of State's Office as required by Mississippi Code Annotated Section 97-17-71.1(1)(a) and 1 Mississippi Administrative Code Pt. 13, R. 2.1.
 - b. Respondent paid compensation for regulated metals without waiting the required three-day-hold period as set forth in Mississippi Code Annotated Section 97-17-71(8) and 1 Mississippi Administrative Code Pt. 13, R. 1.21.
 - c. Respondent paid compensation for air conditioning units sold by someone other than those authorized in Mississippi Code Annotated Section 97-17-71.2(2).
4. A hearing on the matter was held on May 9, 2012, with Hon. F. Kirk Nelson serving as Hearing Officer.
 5. The Hearing Officer's Findings of Facts and Conclusions of Law is attached to this Final Order as Exhibit A. The Hearing Officer found two (2) violation against Necaise in his Findings of Fact. The Secretary of State accepts the recommendation of the Hearing Officer.

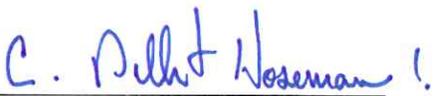
CONCLUSIONS OF LAW

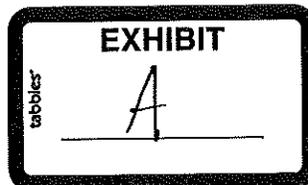
6. Necaise purchased regulated metals while not being a registered metal dealer with the Secretary of State's Office as required by Mississippi Code Annotated Section 97-17-71.1(1)(a) and 1 Mississippi Administrative Code Pt. 13, R. 2.1.
7. Necaise purchased regulated metals while he was not an authorized agent, representative or employee of a company described in Mississippi Code Annotated Section 97-17-71.2(2) as required by the same.

Each separate violation detailed above subjects Necaize to an administrative penalty not to exceed One Thousand Dollars (\$1,000.00) per occurrence. Mississippi Code Annotated Section 97-17-71.1(5)(c)(1). The two (2) violations carry a maximum penalty of Two Thousand Dollars (\$2,000.00). Therefore, it is hereby **ORDERED** an administrative penalty in the amount of Two Thousand Dollars (\$2,000.00) against Necaize to be paid to the Secretary of State, pursuant to the authority granted by Mississippi Code Annotated Section 97-17-71.1(5)(c)(1).

SO ORDERED AND ADJUDGED.

This, the 6 day of September, 2012.


C. DELBERT HOSEMANN, JR.
Secretary of State
State of Mississippi



OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
BUSINESS REGULATION AND ENFORCEMENT DIVISION

IN THE MATTER OF:

Joel Necaise
13373 Cloda Lane
Pass Christian, Mississippi 39571

Administrative Proceeding
Number: M-12-0315

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As the Hearing Officer appointed in this Administrative Proceeding, I have reviewed certain documents, including, but not limited to, Notice of Hearing seeking a Cease and Desist Order and Administrative Penalties dated March 13, 2012, Witness List from the Regulation and Enforcement Division of the Office of the Secretary of State ("Division") dated March 20, 2012, Exhibits admitted at the hearing on May 9, 2012, applicable statutes and regulations.

An administrative hearing was held at the Offices of the Secretary of State, 700 North Street, Jackson, Mississippi 39205, second floor conference room, on May 9, 2012, at which time the Hearing Officer heard testimony from Gary Haygood for the Division and from Joel Necaise for the Respondent. ("Necaise").

Having considered all testimony, argument of Respondent, argument of Counsel for the Division, Amy Foster, all Exhibits admitted at the Administrative Hearing (Exhibits No. 1-3) and applicable law, I hereby find:

FINDINGS OF FACT

1. The Secretary of State has the authority to administer and to provide for the

enforcement of all provisions of the Mississippi Scrap Metal Dealer Registration Act (hereinafter "Act"), Mississippi Code of 1972 (Annotated) § 97-17-71 et seq. (hereinafter "Code") which governs persons who engage in the scrap metal business in the State of Mississippi.

2. The Act requires registration with the Secretary of State for all persons who deal in scrap metal or otherwise engage in the scrap metal business (§ 97-17-71.1).

3. Rules adopted by the Secretary of State by authority granted in Mississippi Code of 1972 (Annotated) § 97-17-71(1)(b) (2008) define a Seller at Rule 1.20 and further provide that a Seller is not exempt from registration as set forth at Rule 2.1(d).

4. The Act provides that a scrap metal dealer shall not enter into any cash transactions in payment for the purchase of metal property and that such payment shall not be made for a period of three (3) days after the purchase transaction (§ 97-17-71(8)).

5. The Act provides that scrap metal described as air conditioner evaporator coils or condensers may only be sold by an authorized agent, representative, or employee of a company described in § 97-17-71.2(a)(b)(c)(d).

6. The Secretary of State's agent for registration and record keeping is LeadsOnline, 15660 N. Dallas Parkway, Suite 800, Dallas, Texas 75248 pursuant to Rule 1.2.

7. Joel Necaise is not registered as a scrap metal dealer with LeadsOnline or with the office of the Secretary of State.

8. Joel Necaise made over fifty sales of metal property in less than a two year period beginning May 3, 2010 and ending March 20, 2012. Exhibit 3 submitted by the Secretary of State and admitted into evidence documents the LeadsOnline record of such sales which included catalytic converters, electric motors, and heaters.

9. Joel Necaïse sold scrap metal as described in § 97-17-71.2(1) when he was not an authorized agent, representative, or employee of a company authorized by the Act.

10. Joel Necaïse prepared, paid for, and placed an advertisement in the Penny Pincher dated February 23, 2012 seeking to purchase copper without a three day wait period.

11. Joel Necaïse placed an advertisement in the Penny Pincher dated February 23, 2012 seeking to purchase scrap air units.

12. Joel Necaïse testified that he did not make any purchases in response to the two advertisements he placed February 23, 2012, nor did he make any purchases of scrap metal. However, he further testified that it was his intent to make such purchases and that he knew such purchases were in violation of the law.

CONCLUSIONS OF LAW

1. The Act requires registration with the Secretary of State for all persons who deal in scrap metal or otherwise engage in the scrap metal business. Joel Necaïse was a seller of scrap metal as defined in Rule 1.20 and was not exempt from registration pursuant to Rule 2.1(d). This action represents a violation of the registration provisions of the act and is subject to an administrative penalty of \$1,000.00 for each offense in accordance with § 97-17-71.1(5)(c)(i).

2. Joel Necaïse sold scrap metal and was not an authorized agent, representative, or employee of a company described in § 97-17-71.2(2)(a)(b)(c)(d) in violation of § 97-17-71.2(2). This action is a misdemeanor punishable by a fine not to exceed \$1,000.00 per offense in accordance with § 97-17-71.2(5)(a).

3. Joel Necaïse intended to violate § 97-17-71(8) by advertising to purchase scrap metal without a three day wait. There was no evidence presented at the Administrative Hearing

substantiating an actual purchase by Joel Necaïse. Accordingly, he should not be charged with a violation of this section of the Act.

THEREFORE, an administrative penalty in the amount of \$2,000.00 is hereby recommended against Joel Necaïse for the violations cited herein, to be paid to the Secretary of State, who shall also be reimbursed for all costs and expenses incurred in the investigation of the violations and the institution of the administrative proceedings as a result thereof.

FURTHER, a Cease and Desist Order is recommended to be issued by the Secretary of State requiring Joel Necaïse to cease and desist from any sale, purchase, or other activity regarding scrap metal until such time as he is in full compliance with all provisions of the Act.

Respectfully submitted, this the 23rd day of May, 2012.



F. Kirk Nelson
Hearing Officer