

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

IN THE MATTER OF:)	ADMINISTRATIVE
JAMES RAY AINSWORTH)	PROCEEDING NUMBER:
281 AINSWORTH ROAD)	LM-15-1297
BRAXTON, MS 39044)	SOS REGISTRATION NO.
)	150251018
)	
<i>Respondent</i>)	

FINAL ORDER

This cause came before a hearing officer on July 22, 2015. On or about September 10, 2015, the Hearing Officer submitted his proposed Findings of Fact and Conclusions of Law, attached as Exhibit A, to the Respondent and to the Undersigned. By letter dated September 15, 2015, Respondent, James Ray Ainsworth, was afforded an opportunity to submit any written comment or input to the Secretary of State before issuance of a Final Order in this cause. Exhibit B. The Respondent failed to submit a response prior to the stated deadline of October 2, 2015. Therefore, the above-styled cause stands ready for final adjudication via this Final Order.

Upon reviewing the recommendation of the hearing officer, to which no response was received from the Respondent, the Undersigned accepts and adopts, in total, the hearing officer's recommendations for Findings of Fact and Conclusions of Law. The same, which are attached as Exhibit A, are fully incorporated into the content of this Final Order.

IT IS HEREBY ORDERED, that James Ray Ainsworth shall pay an administrative penalty in the amount of Five Thousand Dollars (\$5,000.00), to be paid to the Secretary of State on or before Monday, December 21, 2015.

FURTHER, IT IS HEREBY ORDERED, that James Ray Ainsworth shall **CEASE** and **DESIST** from the purchase of regulated metals for a period of One Hundred and Eighty (180)

Days. Such period of Cease and Desist shall extend from December 21, 2015 until the close of business on June 21, 2016. Respondent shall Cease and Desist from the purchase of regulated metals as defined in the Mississippi Scrap Metal Dealer Registration Act codified at Mississippi Code Annotated Section 97-17-71 *et seq.* Any purchase of a regulated metal product during the period of Cease and Desist shall result in Revocation of the Scrap Metal Dealer License issued to James Ray Ainsworth.

SO ORDERED and ADJUDGED.

This, the 16 day of November, 2015.



C. Delbert Hosemann, Jr.

C. DELBERT HOSEMANN, JR.
*In his official capacity as Secretary of
State of the State of Mississippi*

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

IN THE MATTER OF:

JAMES RAY AINSWORTH

SOS REGISTRATION NO. 150251018

SOS CAUSE NO. LM-15-1297

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The undersigned was appointed by the Secretary of State of the State of Mississippi to conduct a hearing and issue a Findings of Fact and Conclusions of Law in the referenced matter. A hearing was held before the undersigned on July 22, 2015, at the offices of the Secretary of State located at 125 South Congress Street, Jackson, Mississippi 39201 at which Honorable Dave Scott appeared as counsel for the Mississippi Secretary of State, David Penson, Examiner and Regulation and Enforcement Officer for the Mississippi Secretary of State, appeared and at which John R. McNeal, Esq. appeared as counsel for Mr. Ainsworth. The said David Penson testified on behalf of the Mississippi Secretary of State. He presented exhibits along with his testimony.

FINDINGS OF FACT

1. The Secretary of State made allegations of violations of the Mississippi Code Annotated § 97-17-71, M.C.A. § 97-17-71.1, and/or the Secretary of State's implementing regulations, They are:
 - A. On November 17, 2014, Mr. Penson observed and photographed regulated metal items being stored on Mr. Ainsworth's property. Mr. Ainsworth was not then registered as a scrap metal dealer with the Secretary of State.
 - B. On January 12, 2015, Mr. Penson contacted Mr. Ainsworth again. Mr. Ainsworth stated that he had continued to buy and sell regulated materials after being informed of the registration requirement by Mr. Penson. Mr. Penson was informed that Mr. Ainsworth had



sold approximately \$13,000 worth of regulated metal to Alter Metal Recycling in Hattiesburg, Mississippi.

- C. Any purchase or dealing in any of the forms of scrap metal regulated under M.C.A. § 97-17-71 by a person who is not registered with the Secretary of State as a scrap metal dealer is a violation of M.C.A. § 97-17-71.1, punishable by criminal penalties, or by an administrative penalty of up to \$1,000 per violation. Such a violation is also grounds for the Secretary of State to deny, suspend, revoke, or refuse to renew the applicant's registration.
- D. Mr. Ainsworth's registration as a scrap metal dealer took effect on February 5, 2015.
- E. After submitting his registration, Mr. Ainsworth failed to capture, record, and upload the identifying information required by law for each person from whom he purchased scrap metal. M.C.A. § 97-17-17(2) requires scrap metal dealers to record the following information for each person from whom a dealer purchases regulated metal:
 - (a) The name, address and age of the person from whom the metal property is purchased as obtained from the seller's personal identification card;
 - (b) The date and place of each acquisition of the metal property;
 - (c) The weight, quantity or volume and a general physical description of the type of metal property, such as wire, tubing, extrusions or casting, purchased in a purchase transaction;
 - (d) The amount of consideration given in a purchase transaction for the metal property;
 - (e) The vehicle license tag number, state of issue and the make and type of the vehicle used to deliver the metal property to the purchaser;
 - (f) If a person other than the seller delivers the metal property to the purchaser, the name, address and age of the person who delivers the metal property;
 - (g) A signed statement from the person receiving consideration in the purchase transaction stating that he is the rightful owner of the metal property or is entitled to sell the metal property being sold;

(h) (i) A scanned copy or a photocopy of the personal identification card of the person receiving consideration in the purchase transaction; or

(ii) If a person other than the seller delivers the metal property to the purchaser, a scanned copy or a photocopy of the personal identification card of the person delivering the metal property to the purchaser; and

(i) A photograph, videotape or similar likeness of the person receiving consideration or any person other than the seller who delivers the metal property to the purchaser in which the person's facial features are clearly visible and in which the metal property the person is selling or delivering is clearly visible.

The Secretary of State's regulations located at Title I, Part 13, Rule 5.1 of the Mississippi Administrative Code require each dealer to upload transaction records containing the information required by statute to the LeadsOnline database by 5:00 p.m. on the next business day after the transaction. Mr. Ainsworth submitted no transaction reports to LeadsOnline after becoming a registered dealer, and there is no evidence that Mr. Ainsworth captured or retained any of the required information in any other form.

F. The Secretary of State alleges that these facts constitute ten (10) or more distinct violations, and requests a monetary penalty of \$10,000 and a cease and desist order under M.C.A. § 97-17-71.1(5)(b) prohibiting Mr. Ainsworth or his business from purchasing regulated metal for 180 days from the date of the order.

2. Mr. Ainsworth, the Respondent, chose not to testify, and his counsel did not present any evidence contradicting or refuting the evidence establishing the above violations. Respondent's counsel disputed only the number of distinct violations, and asserted that Mr. Ainsworth's registration in February evidenced an effort to cure his non-compliance. Further, while Respondent's counsel implied that participating in the LeadsOnline system posed a hardship for the Respondent, no hardship waiver has been filed with the Secretary of State as provided for under M.C.A. § 97-17-71.1(1)(b).

3. In summary, the evidence of the Secretary of State establishes the commission of the alleged acts, and the evidence of the Respondent does not refute the commission of the alleged acts, but, as stated, offers explanations designed to establish an intent to cure the noncompliance.

CONCLUSIONS OF LAW

1. The Secretary of State has established by a preponderance of the evidence, as found above, that Mr. Ainsworth made one or more purchases of regulated metal on or before November 17, 2014. Mr. Ainsworth further admitted to Mr. Penson that he made one or more purchases of regulated metal between November 17, 2014 and January 12, 2015. Transaction records obtained from Alter Metal Recycling confirm that Mr. Ainsworth sold approximately \$13,000 worth of regulated metal to Alter during the month of December 2014.
2. The evidence thus establishes at least two purchases and at least one sale of regulated metal while Mr. Ainsworth was not registered as a scrap metal dealer. Each of those three proven transactions is a separate violation of M.C.A. § 97-17-71.1.
3. M.C.A. § 97-17-71(2) requires a dealer purchasing scrap metal to capture and record eight separate items of information as listed above. Secretary of State regulations require each transaction record to be timely uploaded to LeadsOnline. For each transaction for which the required information was not captured and uploaded, each of the eight required items is a separate violation and the failure to upload is a ninth. Mr. Ainsworth thus committed nine violations related to transaction records for each purchase for which he failed to capture and upload records. As stated above, the Secretary of State has proven that two or more purchases took place, establishing eighteen (18) violations of the statutes and regulations related to transaction records.
4. In total, the evidence and testimony presented by the Secretary of State establish that Mr. Ainsworth committed twenty-one (21) or more distinct violations of the statutes and regulations governing scrap metal dealers.

5. The only issue raised by the Respondent is that he has attempted to cure his non-compliance with the law. Mr. Ainsworth has filed to register as a scrap metal dealer and has created a LeadsOnline account, but his continued failure to upload transaction records casts doubt on the sincerity of his efforts to comply.

CONCLUSION AND AWARD

The hearing officer finds by a preponderance of the evidence that James Ray Ainsworth has violated Mississippi laws and regulations of the Secretary of State relating to the regulation of scrap metal sales in the manner as found above, and the penalties applicable to those violations as set forth above.

Mr. Ainsworth could be indebted to the Secretary of State of the State of Mississippi in the sum and amount of Twenty-One Thousand Dollars (\$21,000.00) for the enumerated violations of Mississippi laws and the applicable regulations of the Secretary of State, and could be permanently denied registration as a scrap metal dealer. However, the Hearing Officer, because of the facts in this case, recommends a fine of a total of Five Thousand Dollars (\$5,000.00) for the violations described in Subparagraphs A-F of Paragraph 1. The Hearing Officer further recommends a cease-and-desist order prohibiting Mr. Ainsworth from dealing in regulated metals for 180 days from the date of order.

WITNESS MY SIGNATURE on this, the 10th day of September, 2015.



MATT A. BALDRIDGE
Hearing Officer



DELBERT HOSEMANN
Secretary of State

September 15, 2015

Mr. John R. McNeal
14 Northtown Drive, Ste. 202
Jackson, MS 39211

By: Certified Mail/Return Receipt Requested &
United States Postal First Class Delivery

Re: Recommendation of Hearing Officer
James Ray Ainsworth
SOS Cause No. LM-15-1297
SOS Registration No. 150251018

Dear Mr. McNeal:

The hearing officer has made a recommendation in the Ainsworth case stemming from the hearing held on Wednesday, July 22, 2015. A copy of the recommendation is enclosed. Under our rules of procedure, you have an opportunity to present anything relevant to the recommendation, in writing, before Secretary Hosemann makes a makes a final decision and issues a Final Order in this case.

If you have anything that you would like for Secretary Hosemann to consider prior to entering a Final Order, please send the same to me at: 125 S. Congress Street, 17th Floor, Jackson, MS 39201. If you wish to submit anything, I must receive it by 5:00 p.m. on Friday, October 2, 2015.

Sincerely,

A handwritten signature in black ink that reads "Dave Scott".

Dave Scott
Assistant Secretary of State
Regulation and Enforcement

Enclosure



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