

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

<b>IN THE MATTER OF:</b>	)	
	)	
<b>Foxworth Recycling, LLC</b>	)	<b>Administrative Proceeding</b>
<b>68 Highway 35 Service Road</b>	)	<b>Number: LM-14-1115</b>
<b>Foxworth, MS 39483</b>	)	
	)	
<b>SOS Registration No. 12095426</b>	)	
	)	
<i>Respondent</i>	)	

**FINAL ORDER**

This cause came before a hearing officer on December 17, 2014. On February 17, 2015, the Hearing Officer submitted his proposed Findings of Fact and Conclusions of Law, attached as Exhibit A. Respondent, Foxworth Recycling, LLC, submitted comment on the Hearing Officer's findings on March 11, 2015. Therefore, the above-styled case stands ready for final adjudication via the 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 Dealer Registration Act (hereinafter "Act"), Mississippi Code Annotated Section 97-17-71, which regulates the purchase of regulated metals in the State of Mississippi.
2. As a purchaser of regulated metal property, Foxworth Recycling, LLC (hereinafter "Foxworth") is subject to the requirements of the Act and regulations promulgated thereunder.

3. During an examination of Foxworth by an examiner from the Regulation and Enforcement Division of the Secretary of State on July 23, 2014, the following violations of the Act were noted:
  - a. Respondent failed to keep records of required information in violation of Mississippi Code Annotated Section 97-17-71(2).
  - b. Respondent paid cash for regulated metal in violation of Mississippi Code Annotated Section 97-17-71(8).
  - c. Respondent knowingly possessed two metal beer kegs without evidence of a bill of sale from a manufacturer or distributor in violation of Mississippi Code Annotation Section 97-17-71(11).
  - d. Respondent failed to properly tag and hold regulated material. Further, the respondent failed to keep such individual regulated metal separate and identifiable from other purchases in violation of Mississippi Code Annotated Section 97-17-71(3).
  - e. Respondent failed to upload purchase transactions to LeadsOnline in violation of Mississippi Administrative Code Pt. 13, R.5.1.
  - f. Respondent failed to display a copy of his dealer's registration on his property as required by 1 Mississippi Administrative Code, Pt. 13, R.7.6.
4. A hearing on the matter was held on December 17, 2014, with Hon. Robert T. Jackson, Sr., serving as hearing officer.
5. Respondent's representative at the hearing did not deny, contradict, or refute the evidence establishing the above violations. The Respondent only stated that the violations were not intentional.

6. The Hearing Officer's Findings of Fact and Conclusions of Law are attached to this Final Order as Exhibit A and are hereby adopted without amendment.

### CONCLUSIONS OF LAW

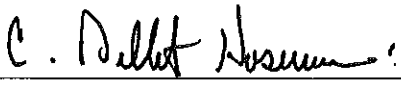
7. Foxworth failed to keep records of required information in violation of Mississippi Code Annotated Section 97-17-71(2).
8. Foxworth paid cash for regulated metal in violation of Mississippi Code Annotated Section 97-17-71(8).
9. Foxworth knowingly possessed two metal beer kegs without evidence of a bill of sale from a manufacturer or distributor in violation of Mississippi Code Annotation Section 97-17-71(11).
10. Foxworth failed to properly tag and hold regulated material. Further, the respondent failed to keep such individual regulated metal separate and identifiable from other purchases in violation of Mississippi Code Annotated Section 97-17-71(3).
11. Foxworth failed to upload purchase transactions to LeadsOnline in violation of Mississippi Administrative Code Pt. 13, R.5.1.
12. Foxworth failed to display a copy of his dealer's registration on his property as required by 1 Mississippi Administrative Code, Pt. 13, R.7.6.

The Hearing Officer found that the Secretary of State had established six (6) sets of violations of the regulations and statutes regulating Scrap Metal Dealers in Mississippi, and that those violations totaled Five Thousand Dollars (\$5,000.00). But, due to the facts of the case the Hearing Officer recommended a fine of a total of Two Thousand Dollars (\$2,000.00). Considering the Hearing Officer's recommendation and Foxworth's response, the undersigned finds that the Hearing Officer's mitigation in penalties from Five Thousand Dollars (\$5,000.00)

to Two Thousand Dollars (\$2,000.00) was just and appropriate and therefore, makes no modification. Therefore, it is hereby ORDERED an administrative penalty in the amount of Two Thousand Dollars (\$2,000.00) against Foxworth Recycling, LLC., to be paid to the Secretary of State, within thirty (30) days from the date of this Final Order, pursuant to the authority granted by the Mississippi Code Annotated Section 97-17-71.1(5)(c)(i).

**SO ORDERED and ADJUDGED.**

This, the 13 day of April, 2015.

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

**DELBERT HOSEMAN, SECRETARY OF STATE  
OFFICE OF THE MISSISSIPPI SECRETARY OF STATE  
REGULATION AND ENFORCEMENT DIVISION**

**IN THE MATTER OF:**

**CHUCKIE RAY LEE  
FOXWORTH RECYCLING, LLC  
68 Highway 35 Service Road  
Foxworth, MS 39483**

**SOS REGISTRATION NO. 12095426  
SOS CAUSE NO. LM-14-1115**

**FINAL ORDER, 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 December 17, 2014, at the undersigned office located at 309 South 40<sup>th</sup> Avenue, Hattiesburg, MS 39402, at which David Penson, Examiner and Regulation and Enforcement Officer for the Mississippi Secretary of State, appeared and at which C. J. Lee, the daughter of the Respondent, appeared on behalf of her father. The said David Penson testified and was represented by counsel for the Mississippi Secretary of State. He presented exhibits along with his testimony. C. J. Lee, daughter of the Respondent, presented some testimony only.

**FINDINGS OF FACT**



1. The Secretary of State made allegations of violations of the Mississippi Code Annotated (the "Code") and/or the Secretary of State Regulations. They are:

- A. Records of required information were not being kept for each transaction as required by the Scrap Metal Law, Code §97-17-71 (2). Specifically, the Respondent failed to record the make and model of the customers' vehicles where regulated materials were purchased. A violation of this Section is a misdemeanor punishable by fine not to exceed One Thousand Dollars (\$1,000.00) per offense.
- B. The Respondent was observed paying cash for regulated materials while Mr. Penson was conducting his examination. As required by Code §97-17-71 (8), a purchaser shall not enter into any cash transactions in the payment for purchases of regulated materials. Payment shall be made by check issued to the seller of the metal, made payable to the name and address of the seller and mailed to the recorded address of the seller, or by electronic funds transfer. Additionally, payment shall not be made for a period of three (3) days after the purchase of the transaction. A violation of this Section is a misdemeanor punishable by fine not to exceed One Thousand Dollars (\$1,000.00) per offense.

- C. Two metal beer kegs were observed on the premises, and photographs of two beer kegs were introduced into evidence. Code §97-17-71 (11) makes it unlawful for a scrap metal dealer or other purchaser to knowingly purchase or possess a metal beer keg, whether damaged or un-damaged, or any reasonably recognizable part thereof, and the same shall not be kept on the premises that the dealer uses to buy, sell, store, shred, cut or otherwise alter scrap metal. A violation of this Section is a misdemeanor punishable by fine not to exceed One Thousand Dollars (\$1,000.00) per offense.
- D. A purchaser is required to hold purchased metal property in a separate and identifiable form for three (3) days to photographically capture the metal property and maintain the photograph for a period of not less than two (2) years. Additionally, the date and time of the purchase shall be digitally recorded on the photograph and the identity of the person taking the photograph shall be recorded. Code §97-17-71 (3) requires that the purchase of metal property must hold the metal property separate and identifiable from other purchases for not less than three (3) business days from the date of the purchase. A violation

of this Section is a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) per offense.

- E. Scrap Metal Dealers must keep an accurate and legible record of purchases and the report must be electronically submitted. Rule 5.1 in Part 13, Chapter 5 (97-17-71.1) (1) (b), of the Secretary of State's Regulations requires that applicants for registration and registered Scrap Metal Dealers must keep an accurate and legible record pursuant to the Act. Applicants and Scrap Metal Dealers shall comply with the record keeping requirements of the Act by submitting a Customer Transaction Report for each purchased transaction. The Customer Transaction Report must be submitted electronically to the Agent, who shall keep and maintain all electronic records pursuant to the Act. Customer Transaction Reports must be uploaded to the Secretary's Agent no later than the close of business (5:00 p.m.) of the next business day following the date of purchase by the Dealer. The Examiner introduced evidence of sales and purchase tickets that were not being uploaded on a daily basis. Examples from LeadOnline introduced into evidence were as follows: Tickets dated from 7/15/2014 through 7/21/2014 were not uploaded until 7/22/2014, and tickets



dated from 6/30/2014 through 7/6/2014 were not uploaded until 7/11/2014. There were eighteen (18) tickets dated from 7/15/2014 to 7/21/2014 that were uploaded late. There were fifteen (15) tickets dated from 6/30/2014 to 7/6/2014 that were uploaded late. This is a total of thirty-three (33) tickets. The failure to upload is a misdemeanor and is punishable by a fine of up to One Thousand Dollars (\$1,000.00) per ticket, or a possible fine of Thirty-Three Thousand Dollars (\$33,000.00). However, the Hearing Officer will reduce that fine to One Thousand Dollars (\$1,000.00).

- F. The Examiner did not find any copy of the Registration Certificate that is required to be posted on the premises for customers to view. Rule 7.6 in Part 13, Chapter 7 (97-17-71.1) (1) (b) of the Secretary of State's Regulations provides that a current Certificate of Registration issued by the Secretary of State shall be posted and displayed in a conspicuous place and in easy view of all who enter the office or fixed location of the Scrap Metal Dealer.

2. C. J. Lee, as stated, representing the Respondent, did not deny, contradict or refute the evidence establishing the above violations. The Respondent's representative only stated that the violations were not intentional, that she did not know of the existence of the Rules, nor did she know how to comply with them. She stated

that her father, the Respondent, was sick and had just instructed her to “run the business”.

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 a lack of intent to violate the regulations and statutes.

### **CONCLUSIONS OF LAW**

1. The Secretary of State has established, as found above, six (6) sets of violations of the regulations and statutes regulating Scrap Metal Dealers in Mississippi, and that the violations total Five Thousand Dollars (\$5,000.00) for violations described in Subparagraphs (a), (b), (c), (d), (e) and (f).

2. The only issue raised by the Respondent is that the violations were not intentional, that her father was sick, and she was having to run the business herself, having no knowledge of the requirements of the rules, regulations, and statutes. Her attitude was submissive and she exhibited and stated her intention to obey the law.

### **CONCLUSION AND AWARD**

The hearing officer finds that Chuckie Ray Lee of Foxworth Recycling, LLC, 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.

Chuckie Ray Lee and Foxworth Recycling, LLC, could be indebted to the Secretary of State of the State of Mississippi in the sum and amount of Five Thousand Dollars (\$5,000.00) for the enumerated violations of Mississippi laws and the applicable regulations of the Secretary of State. However, the Hearing Officer, because of the facts in this case, recommends a fine of a total of Two Thousand Dollars (\$2,000.00) for the violations described in Subparagraph (e) of Paragraph 1.

WITNESS MY SIGNATURE on this, the 12<sup>th</sup> day of February, 2015.

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ROBERT T. JACKSON, SR.  
Hearing Officer