



- i. The name, address, and age of the person from who the metal property was purchased from a personal identification card of the seller;
    - ii. The seller's vehicle license tag number, the state that issued the tag, and the make and type of vehicle used to transport the regulated metals to the business;
    - iii. A signed statement from the seller of the metal property, who received payment from L & M Scrapyard, LLC, that he/she was the rightful owner of the property and was entitled to sell the metal;
    - iv. A scanned copy or a photocopy of the personal identification card of the seller;
    - v. A photograph, video or similar likeness of the person who delivers the metal property or for the person receiving payment in which the person's facial features are clearly visible and in which the metal property being sold or delivered is clearly visible.
  - c. Respondent was in possession of a metal beer keg without evidence of a bill of sale from a manufacturer or distributor in violation of Mississippi Code Annotated Section 97-17-71(11).
  - d. Respondent failed to properly tag and hold purchased regulated metal property for a (3) day period, as required by Mississippi Code Annotated Section 97-17-71(3).
4. Respondent testified that he was in a coma for approximately six (6) weeks following an accident in mid-2013. He stated he did not remember receiving any letters from the Secretary of State's Office regarding the status of his lapsed registration.
5. A hearing on the matter was held on December 17, 2014, with Hon. Robert T. Jackson, Sr., serving as hearing officer.
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**

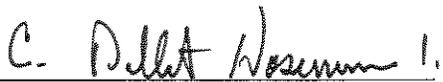
7. L&M operated as a scrap metal dealer with an expired registration in violation of Mississippi Code Annotated Section 97-17-71.1(1)(a).

8. L&M failed to obtain required items when purchasing regulated metals in violation of Mississippi Code Annotated Section 97-17-71(2).
9. L&M was in possession of a metal beer keg without evidence of a bill of sale from a manufacturer or distributor in violation of Mississippi Code Annotated Section 97-17-71(11).
10. L&M failed to properly tag and hold purchased regulated metal property for a (3) day period, as required by Mississippi Code Annotated Section 97-17-71(3).

The Hearing Officer found that the violations supported a monetary fine in the amount of Four Thousand Five Hundred Dollars (\$4,500.00). But, due to the particular facts of the case, the Hearing Officer recommended a fine of Two Thousand Dollars (\$2,000.00) against Morgan Lewis and L&M Scrapyard, LLC. Considering the Hearing Officer's recommendation the undersigned finds that the Hearing Officer's mitigation in penalties, from Four Thousand and Five Hundred Dollars (\$4,500.00) to Two Thousand Dollars (\$2,000.00), was just and appropriate and therefore makes no modification. It is hereby **ORDERED** an administrative penalty in the amount of Two Thousand Dollars (\$2,000,00) against L&M Scrapyard, LLC, be paid to the Secretary of State, within thirty (30) days from the date of this Final Order, pursuant to the authority granted by Mississippi Code Annotated Section 97-17-71.1(5)(c)(i).

**SO ORDERED and ADJUDGED.**

This, the 13 day of April, 2015.

  
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:**

**L&M SCRAPYARD, LLC  
117 Lincoln Drive  
Magee, MS 39111**

**SOS PROCEEDING NO.: LM-14-1082  
SOS REGISTRATION NO. 140714686  
SOS FILE NO. MT-1405-009**

**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 office of the undersigned 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 Mr. Morgan Lewis appeared individually and as the duly authorized and empowered officer of L&M Scrapyard, LLC. The said David Penson testified and was represented by counsel for the Mississippi Secretary of State. He presented exhibits along with his testimony. Morgan Lewis 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. Information required by Scrap Metal Law, §97-17-71 was not being kept for each transaction. §97-17-71 (2) requires that every scrap metal dealer or other purchaser shall keep an accurate and legible record in which he shall enter the following information of each purchase transaction:

(1) The name, address and age of the person from whom the metal property is purchased as obtained from the seller's personal identification card;

(2) The date and place of each acquisition of the metal property;

(3) The weight, quantity or volume and a general physical description of the type of metal property, such as wire, tubing, extrusions or casing, purchased in a purchase transaction;

(4) The amount of consideration given in a purchase transaction for the metal property;

(5) 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;

(6) 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;

(7) 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;

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

(b) 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

(c) 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.)

Such records shall be maintained by the scrap metal dealer or purchaser for not less than two (2) years from the date of the purchase transaction, and such records shall be made available to any law enforcement officer during usual and customary business hours.

The Investigator found that purchase tickets kept by the Respondent failed to capture the following information:

1. The name, address and age of the person from whom the metal property is purchased as obtained from the seller's personal identification card;
2. The vehicle license tag number, state of issue and the make and type of vehicle used to deliver the metal property to the purchaser;
3. 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;

4. A scanned copy or a photocopy of the personal identification card of the person receiving consideration in the purchase transaction;

5. 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.

Any person willfully or knowingly violating the provisions of this Section shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) per offense.

B. Two (2) metal beer kegs were observed on the premises. Code §97-17-71 (11) provides that it shall be unlawful for a scrap metal dealer or other purchaser to knowingly purchase or possess a metal beer keg, or metal syrup tank generally used by the soft drink industry, whether damaged or un-damaged, or any reasonably recognizable part thereof, on any premises that the dealer uses to buy, sell, store, shred, melt, or cut or otherwise alter scrap metal.

Any person willfully or knowingly violating the provisions of this Section shall, upon conviction thereof, be deemed guilty of a

misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) per offense.

- C. The Investigator found that proper records were not maintained, nor were controlled materials held for the period of time prescribed by law. Code §97-17-71 (9) provides that if a person acquiring metal property fails to maintain the records or to hold such materials for the period of time prescribed by this Section, such failure shall be *prima facie* evidence that the person receiving the metal property received it knowing it to be stolen and in violation of §97-17-70.

Any person willfully or knowingly violating the provisions of this Section shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) per offense.

- D. A purchaser of regulated metals must tag purchased metals and hold them in separate and identifiable containers that can be distinguished from other purchases for the required three (3) days. §97-17-71(3) provides that the purchaser 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 purchase. The purchaser shall also photographically capture the metal property in the same form, without change, in which the metal property was acquired, and maintain the photograph for a period of not less than two (2) years. The time and date shall be digitally recorded on the photograph, and the identity of the person taking the photograph shall be recorded. The purchaser shall permit any law enforcement officer to make an inspection of the metal property during the holding period, and of all photographs of the metal property. Any photograph of metal property taken and maintained pursuant to this subsection shall be admissible in any civil or criminal proceeding.

Any person willfully or knowingly violating the provisions of this Section shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) per offense.

- E. The Respondent did not register with the Secretary of State and thus held no valid and current license to purchase regulated metals. §97-17-71.1(1)(a) provides that from and after August 7, 2008, it shall be unlawful for any scrap metal dealer or any person who purchases scrap metal, deals in scrap metal, or otherwise

engages in the scrap metal business to fail to register with the Secretary of State. All registrations under this Section shall expire two (2) years from the date of the registration or the renewal thereof.

The Investigator found that the Respondent's registration expired on July 7, 2013. On June 13, 2013, the Division issued a letter to the Respondent advising it of the pending expiration of its registration with instructions on how to renew. One day after the Respondent's license expired, the Division issued a written notice to the Respondent on July 8, 2013, advising that its registration had expired on July 7, 2013. The Respondent was notified in this letter that it is "unlawful for any scrap metal dealer or any person who engages in the scrap metal business to fail to register with the Secretary of State". The Respondent never renewed its registration.

Any person willfully or knowingly violating the provisions of this Section shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine of not less than Five Hundred Dollars (\$500.00), but not to exceed One Thousand Dollars (\$1,000.00) for the first offense. Any person guilty of any

subsequent violations of this Section requiring registration shall be guilty of a felony offense and shall be imprisoned in the custody of the Department of Corrections for a term not to exceed three (3) years, a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

- F. The Respondent testified that he was in a coma for approximately six (6) weeks and that a tree fell on him. He stated that he didn't remember getting any letter from the Secretary of State's office. The tree accident happened on or about April 2, 2013, and the Respondent was released from the hospital on or about June 1, 2013, and wore a neck collar until approximately Christmas of that year. He testified that he thought that an employee in his office was filing all required papers and was likewise following the statutes. The letters from the office of the Secretary of State were written during the period that the Respondent was hurt and the Respondent's Certificate of Registration expired during that period, actually on July 7, 2013.

### **CONCLUSIONS OF LAW**

1. The Secretary of State has established, as found above, five (5) sets of violations of the regulations and statutes regulating Scrap Metal Dealers in Mississippi, and that the violations total Four Thousand Five Hundred Dollars (\$4,500.00).

2. The only issue raised by the Respondent is that the violations occurred during the time of his accident and that he felt like an employee was properly complying with the rules, regulations and statutes. His attitude was submissive, explanatory, and he stated that he had no intention to disobey the law.

### **CONCLUSION AND AWARD**

The Hearing Officer finds that Morgan Lewis of L&M Scrapyard, 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.

Morgan Lewis and L&M Scrapyard, LLC, could be indebted to the Secretary of State of the State of Mississippi in the sum and amount of Four Thousand Five Hundred Dollars (\$4,500.00) for the enumerated violations of Mississippi laws and the applicable regulations of the Secretary of State. However, because of the facts in this case, the Hearing Officer recommends a total fine of Two Thousand Dollars (\$2,000.00) against Morgan Lewis and L&M Scrapyard, LLC.

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

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ROBERT T. JACKSON, SR.  
Hearing Officer