

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

**IN THE MATTER OF:**

**WIG'S SCRAP YARD, LLC  
37 SOUTH FRONTAGE ROAD  
COLUMBIA, MS 39429**

**Respondent**

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**Administrative Proceeding  
Number: LM-17-2811**

**FINAL ORDER**

This cause came before the hearing officer on March 27, 2018. On June 11, 2018, the appointed hearing officer submitted his recommendation, attached as Exhibit A. The Respondent was sent the recommendation and given fourteen (14) days to respond. This response was received and considered by the Secretary of State's Office and is attached as Exhibit B. 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 Dealer Act ("Act"), Mississippi Code Annotated § 97-17-71, *et seq.* which governs persons purchasing regulated metals in the State of Mississippi.
2. As a purchaser of regulated metal property, Wig's Scrap Yard, LLC ("Wig's") is subject to the requirements of the Act.
3. The Secretary of State, Regulation and Enforcement Division ("Division") has jurisdiction over the parties and subject matter herein.
4. Following an examination of Wig's, the following violations of the Act were noted:
  - a. Mississippi Code Annotated § 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. On November 9, 2017, an examiner from the Division visited Wig's Scrap Yard after receiving complaints that Wig's purchased regulated material and was not registered with the Secretary of State's Office. The examiner then sold two (2) different types of regulated materials to Wig's. These materials included two pounds (2 lbs.) of copper and one (1) air conditioning coil weighing thirty-five pounds (35 lbs.). This constitutes a violation of Mississippi Code Annotated § 97-17-71.1(1)(a).
- b. Mississippi Code Annotated § 97-17-71(8) provides that scrap metal dealers or other purchasers shall not enter into any cash transaction in payment for the purchase of metal property. All payments must be made by check three (3) days following the purchase. On November 9, 2017, the examiner sold two (2) different types of regulated materials to Wig's. The examiner was paid Three Dollars and Ten Cents (\$3.10) in cash for the copper pipe and Thirty-Five Dollars (\$35.00) in cash for the air conditioning coil. A total amount of Thirty-Eight Dollars and Ten Cents (\$38.10) was paid to the examiner in cash for regulated metals. An additional Four Dollars and Forty-Four Cents (\$4.44) was paid for non-regulated materials in the same transaction. This constitutes a violation of Mississippi Code Annotated § 97-17-71(8).
  - c. Mississippi Code Annotated § 97-17-71.2(2) provides, in pertinent part, that air conditioner evaporator coils or condensers may only be sold for scrap by an authorized agent, representative or employee of a licensed HVAC contractor who acquired the evaporator coil or condenser in the performance as a contractor; a company meeting all local or municipal requirements to obtain a permit from that jurisdiction to repair, replace and install HVAC units containing copper evaporator coils or condensers; where the jurisdiction does not require a permit to repair, replace and install HVAC units containing copper evaporator coils or condensers, by a company holding privilege license indicating the business as that of an HVAC installer or repairer; or a company holding a privilege license indicating the business as that of an HVAC installer or repairer. Wig's did not ask the examiner to identify himself as any of the four (4) options listed above when he presented the air conditioning coil for purchase. This constitutes a violation of Mississippi Code Annotated § 97-17-71.2(2).
  - d. Mississippi Code Annotated § 97-17-71 (2) provides that scrap metal dealers are required to capture the following information for each regulated metal purchase:
    - i. The name, address and age of the person from whom the metal property is purchased as obtained from the seller's personal identification card;
    - ii. The date and place of each acquisition of the metal property;

- iii. 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;
- iv. The amount of consideration given in a purchase transaction for the metal property;
- v. 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;
- vi. 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;
- vii. 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;
- viii. A scanned copy or a photocopy of the personal identification card of the person receiving consideration in the purchase transaction;
- ix. 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 metal property the person is selling or delivering is clearly visible.

During the purchase of the examiner's regulated materials, Wig's did ask to copy his driver's license and had him sign a receipt. However, Wig's did not obtain any of the other required information listed above. This constitutes a violation of Mississippi Code Annotated § 97-17-71 (2).

5. A hearing on the matter was held on March 27, 2018, with Hon. Walker W. Jones, III, serving as hearing officer.
6. The hearing officer's Findings of Fact and Conclusions of Law are attached as Exhibit A and are hereby adopted, with amendment. While the hearing officer found that Wig's was liable for the violations presented at the hearing, he used the criminal statute found at Mississippi Code Annotated § 97-17-71 (16) for his analysis of the administrative penalty instead of Mississippi Code Annotated § 97-17-71.1 (5)(c), which is the correct statute to use in this instance.

**Conclusions of Law**

7. Wig's purchased regulated metal without a license to do so as required by Mississippi Code Annotated § 97-17-71.1(1)(a).
8. Wig's paid cash on the spot for regulated metals as prohibited by Mississippi Code Annotated § 97-17-71(8).
9. Wig's purchased HVAC equipment from an unlicensed individual, which is prohibited by Mississippi Code Annotated § 97-17-71.2(2).
10. Wig's failed to capture identifying information for each regulated metal purchase as required by Mississippi Code Annotated § 97-17-71 (2).

The hearing officer recommended an administrative penalty in the amount of Three Thousand Seven Hundred Fifty Dollars (\$3,750.00).

**IT IS HEREBY ORDERED**, that Wig's Scrap Yard, LLC shall pay an administrative penalty in the amount of Three Thousand Seven Hundred Fifty Dollars (\$3,750.00), to be paid to the Secretary of State on or before Friday, August 22, 2018.

**SO ORDERED AND ADJUDGED.**

This, the 13<sup>th</sup> day of July, 2018.



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 ENFORCEMENT DIVISION**

**IN THE MATTER OF WIG'S SCRAP YARD,  
LLC, JERRY DOGETT AND DANNY DELANCY  
P.O. Box 602  
Foxworth, Mississippi 39483**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The undersigned, Walker W. Jones, III, was duly appointed by the Secretary of State, State of Mississippi, Honorable Delbert Hoseman, to conduct a hearing and issue findings of fact and conclusions of law in the above referenced matter.

A hearing of this matter was held on Tuesday, March 27, 2018 at the offices of the Mississippi Secretary of State , 125 South Congress Street, Jackson, Mississippi before the undersigned pursuant to a Notice of Hearing from the Secretary of State's Office dated March 6, 2018.. At said hearing, the Secretary of State was represented by Amy C. Foster, Senior Attorney, Regulation and Enforcement, Office of the Secretary of State. Mr. David Penson, of the Mississippi Attorney General's Office, formally an Examiner in Regulation and Enforcement for the Mississippi Secretary of State's office appeared on behalf of the State of Mississippi. The respondents Jerry Doggett and Danny Delancy of Wig's Scrap Yard, LLC, and an employee of Wig's Scrap Yard, LLC ("Wig's"), Patty Carter, appeared on behalf of Wig's. The respondents were not represented by counsel. After the March 27 hearing, and as requested by the undersigned, Ms. Carter forwarded two documents to supplement the record before the Secretary of State. These documents are "LeadsOnline" tickets reflecting transactions by Wig's on March 19, 2018 and March 21, 2018. Said exhibits are attached hereto as Exhibits 1 and 2 in order to supplement the record before the Hearing Officer.



## Findings of Fact

1.

The Secretary of State's Office, represented by Ms. Foster, produced evidence of statutory violations through testimony of Mr. Penson which was not rebutted by the respondents. The Respondents' "defense" was an assertion they were not aware of the statutory requirements alleged to have been violated as more specifically described below.

2.

The Secretary of State alleged violations of the following specific provisions of the Mississippi Code Annotated, to wit:

A) On November 11, 2017, Mr. Penson visited Wig's Scrap Yard after receiving complaints that Wig's purchased regulated material and was not registered with the Secretary of State's Office. On that date, Mr. Penson sold two different types of regulated materials to Wig's. The materials included 2 lbs. of copper and one air conditioning coil weighing 35 lbs. This purchase constitutes a violation of Miss. Code Ann. §97-17-71.1 (1)(a), which requires scrap metal dealers to register with the Secretary of State's office. Failure to register is punishable by a fine of not less than \$500.00 but not to exceed more than \$1,000 for the first offense. On November 11, 2017 Wig's was not registered with the Secretary of State's Office as required by the above referenced state.

B) On November 9, 2017, Mr. Penson sold two different types of regulated materials to Wig's. Mr. Penson was paid \$3.10 in cash for copper pipe and \$35.00 in cash for an air conditioning coil. A total of \$38.10 was paid to Mr. Penson in cash for regulated metals. Further, an additional \$4.40 was paid, in cash, for non-regulated

materials in the same November 9, 2017 transaction. This transaction constituted a violation of Miss. Code Ann. §97-17-71(8) in that this section requires payment to be made by check, issued to and mailed to the seller of the scrap metal property, or by electronic funds transfer. Payment shall not be made for a period of three (3) days. Section 97-17-71(16) provides those deemed guilty of willful and knowing violations of this section shall be fined not less than \$1,000 per offense. <sup>1</sup> The undersigned is of the opinion based upon a preponderance of the evidence, the failure to comply with §97-17-71(8) was a “wilful or knowing” violation of §97-17-71(8).

C) Section 97-17-71.2(1) provides, inter alia, it is an offense for a scrap metal dealer or other purchaser to pay cash for air conditioner evaporator coils or condensers at the time of the transaction. Such scrap metal described in §97-17-71(1) may only be sold for scrap by an authorized agent, representative or employee of one of the following:

- a) A licensed HVAC contractor who acquired the evaporator coil or condenser as a contractor. <sup>2</sup>
- b) A company meeting all local or municipal requirements to obtain a permit from that jurisdiction to repair, replace and install HVAC units containing copper evaporated coils or condensers.
- c) Where the jurisdiction does not require a permit to repair, replace and install HVAC units containing copper evaporator coils or condensers, by a company holding a privileged license indicating the business as that of an HVAC installer

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<sup>1</sup>Of the statutes under which the Secretary seeks monetary fines, only §§97-17-71 (2) and (8) require a finding of willful or knowing violation. See, §9-17-71(16).

<sup>2</sup> As defined in §31-3-1.

or repairer; or,

d) A company holding a privileged license indicating the business as that of an HVAC installer or repairer.

In the present case, Wig's did not request Mr. Penson to identify himself as being any of the three above noted and described persons<sup>3</sup> listed in the statute when he presented the air conditioning coil for purchase. This constitutes a violation of Miss. Code Ann. 97-17-71.2(2), for which the Secretary may impose a fine not to exceed \$1,000.00 per offense.

D) Section 97-17-71(2)(a)-(i) provides, inter alia, that scrap metal dealers are required to capture certain information and keep an accurate and legible record of all the required information enumerated in §97-17-71 for each purchase transaction. These nine items of information are:

- (a) Name, address and age of the person from whom the metal property is purchased as obtained from the seller's personal identification card;
- (b) 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 castings, 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;

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<sup>3</sup>An "authorized agent, representative or employee."

- (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 must be disclosed;
- (g) A signed statement from the person receiving consideration in the purchase transaction stating that he or she is the rightful owner of the metal property or is entitled to sell the metal property being sold;
- (h) A scanned copy or a photocopy of the personal identification card of the person receiving consideration in the purchase transaction; 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 metal property the person who is selling or delivering is clearly visible.

Except for asking for Penson's driver's license and giving a signed receipt to Penson, Wig's did not ask for nor did it obtain the statutorily required information noted above. This is a violation of §97-17-71(2), which carries a fine of not less than \$500.00 or more than \$1,000.00 for the first offense.

3.

The potential fines for the alleged statutory violations in the March 27, 2018 Notice of Hearing total Four Thousand and no/100 Dollars (\$4,000.00). The record before the undersigned does not indicate any prior statutory violation history on the part of respondents Wig's, Jerry Doggett or Danny Delancy of any of the Secretary of State's enumerated statutes, rules or regulations. The evidence of the Secretary of State, however, establishes the commission of the claimed statutory violations and the testimony of the respondents does not refute the same. As

stated above, Wig's et al explains these statutory violations by claiming a lack of knowledge of the legal requirements in the referenced statutory schemes, rules or regulations.

#### Conclusions of Law

1.

The undersigned finds the Secretary of State has established violations of §97-17-71.1(a) and §97-17-71.2(2) as discussed above.

2.

It is clear, from a preponderance of the evidence, Wig's et al did violate §§97-17-71(2) and (8) by not recording or obtaining certain required information and improperly paying cash to Mr. Penson. These violations by respondents must be shown to be willful or knowing violations. The undersigned believes the maximum fine of One Thousand dollars (\$1,000.00) should, in the exercise of discretion, be reduced to seven hundred and fifty dollars (\$750.00) as the respondents have acknowledged responsibility for the stated violations at the hearing. Further, after the respondents received the March 6, 2018 notice of the allegations from the Secretary, it appears to the undersigned respondents made a bona fide attempt to gather the statutorily required information necessary to properly document such transactions. See exhibits 1 and 2 hereto.

Wherefore, the undersigned hearing officer recommends the respondents Wig's Scrap Yard, LLC, Jerry Doggett and Danny Delancy be fined a total amount of Three Thousand Seven Hundred and Fifty Dollars (\$3,750.00).

Witness my signature, this the 11th day of June, 2018.

  
Walker W. Jones, III  
Hearing Officer

To The Secretary of State,

We deeply regret the misconduct of the former management of our company. We understand that we have to pay the fine in the amount of \$3,750.00 and that we were in the wrong. Since we are now under new management, we would like to know if by paying the fine when and if we will be able to start back buying the non-ferris department. We truly regret any wrong doing, from our former management. We would like to know how you would like the payment. Do we use company check or money order. We really and truly would like to take care of this matter as soon as possible.

Sincerely Management,

