

Findings of Fact

1. Prior to December 2011, Delgrosso was an owner of MAG.
2. On December 2, 2011, Delgrosso pled guilty to simulating legal process in violation of § 575.130. The conduct arose from a dispute he had with a city employee over a utility bill. Delgrosso was sentenced to one year's supervised probation and received a suspended imposition of sentence.
3. In December 2011, Delgrosso submitted a completed Form 4682, "Application for Dealer, Auction, or Manufacturer License and Number Plate(s)," by which he was applying to obtain MAG's motor vehicle license for 2012.
4. The form showed Delgrosso and John Delgrosso as owners of MAG.
5. Delgrosso was told by a Department employee that MAG's license would not be renewed until the general counsel's office of the Department reviewed the renewal documents because of Delgrosso's criminal conviction.
6. Delgrosso then conveyed his ownership interest in MAG to John Delgrosso.¹ This was indicated by striking through Delgrosso's name where the owners or partners were listed.
7. On January 6, 2012, the Department approved MAG's application for a license.
8. On May 10, 2012, the Director sent Delgrosso a letter in which she formally notified Delgrosso that she had decided to refuse to list him as an owner of MAG for calendar year 2012 because of his conviction for simulating legal process.

¹ Delgrosso uses the word "forfeited." "Forfeiture" has two relevant definitions: (a) the divestiture of property without compensation, and (b) something lost or confiscated in the process of divestiture. Black's Law Dictionary (9th ed.) 722. We understand why Delgrosso would use the word, because he was conveying his interest in response to the Department's threat that it would deny MAG's application if he was shown as an owner.

Conclusions of law

The Director made her decision pursuant to § 301.562,² which reads in relevant part:

1. The department *may* refuse to issue or renew any license required pursuant to sections 301.550 to 301.573 for any one or any combination of causes stated in subsection 2 of this section. The department shall notify the applicant or licensee in writing at his or her last known address of the reasons for the refusal to issue or renew the license and shall advise the applicant or licensee of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any license issued under sections 301.550 to 301.573 for any one or any combination of the following causes:

* * *

(3) The applicant or license holder has, within ten years prior to the date of the application, been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of any business licensed under sections 301.550 to 301.573; for any offense, *an essential element of which is fraud, dishonesty, or an act of violence*; **or** for any offense involving moral turpitude, whether or not sentence is imposed[.]

(Emphasis added.) “May” means an option, not a mandate.³ Section 301.562.2(3) does not consider the particulars of the offense or even the facts and circumstances behind it, but considers only three possibilities—whether the offense is reasonably related to the qualifications, functions, or duties of a motor vehicle dealer; whether an essential element of the offense is fraud, dishonesty, or an act of violence; or whether the offense involves moral turpitude, whether or not sentence is imposed. If any possibility is satisfied, we may find that grounds exist to refuse to renew a license.

² RSMo Supp. 2012. Statutory references, unless otherwise noted, are to RSMo 2000.

³ *S.J.V. ex rel. Blank v. Voshage*, 860 S.W.2d 802, 804 (Mo. App., E.D. 1993).

In this case, the Director only asserted that grounds existed to deny Delgrosso a license due to his guilty plea for simulating legal process as set out in § 575.130, specifically alleging that essential elements of that offense were fraud and dishonesty.⁴ Section 575.130 reads:

1. A person commits the crime of simulating legal process if, with purpose to mislead the recipient and cause him to take action in reliance thereon, he delivers or causes to be delivered:

(1) A request for the payment of money on behalf of any creditor that in form and substance simulates any legal process issued by any court of this state; or

(2) Any purported summons, subpoena or other legal process knowing that the process was not issued or authorized by any court.

2. This section shall not apply to a subpoena properly issued by a notary public.

3. Simulating legal process is a class B misdemeanor.

4. No person shall file a nonconsensual common law lien as defined in section 428.105, RSMo.^{5]}

5. A violation of subsection 4 of this section is a class B misdemeanor.

6. Subsection 4 of this section shall not apply to a filing officer as defined in section 428.105,^{6]} RSMo, that is acting in the scope of employment.

⁴ When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application. *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

⁵ A nonconsensual common law lien is a document that purports to assert a lien against the assets, real or personal, of any person and that, regardless of any self-description: (a) Is not expressly provided for by a specific state or federal statute; (b) Does not depend upon the consent of the owner of the property affected or the existence of a contract for its existence; and (c) Is not an equitable or constructive lien imposed by a state or federal court of competent jurisdiction. Section 428.105.1(3).

⁶ "Filing officer" is the secretary of state, the recorder of deeds of any county, the circuit clerk of any county or any public official or authorized employee required by law to accept for filing and keep as a public record any lien, deed, instrument, judgment or other document, whether in paper, electronic or other form, required to be filed or recorded under the laws of this state. Id. § 428.105.1(2).

An essential element is one that must be proven for a conviction in every case.⁷ Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.⁸ It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.⁹

Delgrosso asserted that the basis for the conviction involved a late charge on a utility bill, a disagreement with a city employee, and that the conviction resulted from a plea agreement that, he was guaranteed, would not affect his employment.¹⁰ He also challenged the Director's counsel to show where the words *fraud* or *dishonesty* appear in § 575.130, which they do not. However, we do not look merely to see whether the exact words were used in the statute defining the offense, but rather to see whether the concept is embraced in the statute. Furthermore, § 301.562.2(3) does not ask us to inquire into the circumstances behind the offense, but merely to decide whether an essential element of the offense is fraud, dishonesty, or moral turpitude. Therefore, we apply the above definitions of *fraud* and *dishonesty* to the offense.

A conviction for simulating legal process under § 575.130.1-.3 requires a person to deliver (or cause to be delivered) a document falsely purporting to be from a court, with the purpose of misleading the recipient and causing him to take reliance thereon. A conviction under § 575.130.4-.6 requires the filing of a document falsely asserting a lien. Both types of actions necessarily involve the preparation or use of documents purporting not only to be genuine, but to be clothed in legal authority. Therefore, they are dishonest. However, using the above definition of "fraud," we cannot say that the actions described in § 575.130 would necessarily induce

⁷*State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

⁸*State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

⁹MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

¹⁰Tr. 14-16.

another to part with something valuable belonging to him. Therefore, we conclude that the offense of simulating legal process has an essential element of dishonesty, but not fraud.

*Other grounds for denial of licensure not
pleaded in the Director's answer*

Delgrosso also asserted that the offense of simulating legal process bore no relationship to the business of buying and selling motor vehicles in the way that motor vehicle theft, VIN alteration, or odometer tampering would. He used the analogy that if a teacher had an affair with a student, the teacher's teaching certificate could be revoked, but his or her driver's license would not be revoked for that conduct. However, since the Director's answer did not plead that Delgrosso committed an offense reasonably related to the qualifications, functions, or duties of a motor vehicle dealer, we need not discuss that possibility. Similarly, since the Director did not allege that the offense of simulating legal process involved moral turpitude, we need not consider that possibility either.

*Delgrosso was not denied due process by the Director because
the Director's action to which he referred could only happen
after this Commission found cause to discipline his license,
which had not yet occurred.*

Delgrosso asserted in his brief that the Director denied his due process rights by not affording him 30 days' notice before either holding a hearing or suspending his license. We first note that this Commission does not have authority to decide constitutional issues,¹¹ and would generally say no more on the issue, but we take the opportunity to clear up what we think is the basis for this claim.

¹¹ *Sprint Communications Co., L.P. v. Director of Revenue*, 64 S.W.3d 832, 834 (Mo. banc 2002); *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957 (Mo. banc 1999); *Williams Cos. v. Director of Revenue*, 799 S.W.2d 602, 604 (Mo. banc, 1990); *Fayne v. Dept. of Soc. Serv's*, 802 S.W.2d 565 (Mo. App., W.D. 1991).

Delgrosso cited no authority in support of his due process claim, but he appears to refer to 12 CSR 10-26.220, the Director's regulation titled, "Dealer Disciplinary Hearings." The regulation does, indeed, call for a disciplinary hearing for a motor vehicle, notice of which is to be given by the Director:

[w]ithin thirty (30) days of the receipt of the certification of the Administrative Hearing Commission's record, findings of fact, conclusions of law, and transcript finding that cause exists to discipline a dealer's license[.¹²]

The prerequisite for the disciplinary hearing is, therefore, that this Commission would *already* have held a hearing where cause was found to discipline the dealer's license. Further, as we already pointed out in our order of November 14, 2012, where Delgrosso cited the same regulation as authority for his assertion that the parties to this case were not allowed to file reply briefs, the "Purpose" clause of this regulation states:

The department [of Revenue] must provide an opportunity for a hearing on the issue of the discipline to be imposed against a license *upon a finding by the Administrative Hearing Commission that grounds exist to discipline that license*. This rule establishes the procedure for scheduling and conducting that hearing.

(Emphasis added.) Delgrosso's due process rights, as he raised them in this case, are satisfied by the hearing we have given him.

Sections 301.562 and 575.130 are not unconstitutional for lack of a title or an enacting clause.

Delgrosso alleges in his post-hearing brief that "none of the laws cited in the complaint¹³ by the Department of Revenue against [him], as found in the RSMo Missouri Revised Statutes, contain any enacting clauses." He also asserted that the statutes were unconstitutional for their

¹² 12 CSR 10-26.220(2).

¹³ The Director filed an answer, not a complaint. Delgrosso's original filing with this Commission constitutes the complaint in this case.

lack of a title. He is correct in that the constitutionally correct laws are not found in the Revised Statutes of Missouri, but he is wrong in alleging that the laws lack enacting clauses and titles—because he looked in the wrong place.

He cites Missouri Const. art. III, § 21, which states in relevant part:

The style of the laws of this state shall be: “Be it enacted by the General Assembly of the State of Missouri, as follows.” No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose.”

He also cites art. III, § 50 of our Constitution, which only applies to petitions for laws proposed by initiative petitions, and is therefore inapplicable. We think he refers to art. III, § 23, which states in relevant part:

No bill shall contain more than one subject which shall be clearly expressed in its title.

Delgrosso can be forgiven for thinking that, by reading the Revised *Statutes* of Missouri, he was reading the *laws* of Missouri. *Statutes* are enacted, amended, or repealed by *laws* passed by the General Assembly. Those laws are found in annual books that, until 1998, were published by the Secretary of State, and thereafter were, and are, published by the Committee on Legislative Research. When published by the Secretary of State, the books were titled, “Laws of Missouri, [year],” and were published annually. When published by the Committee on Legislative Research, the books were, and are, titled, “Session Laws of Missouri, [year].”

In this case, the session laws enacting both §§ 301.562 and 575.130 contain the Constitutionally required language. Section 301.562 was originally enacted in 1988 by the 84th General Assembly in its Second Regular Session. Its title is:

AN ACT To repeal sections 301.254, 301.255, 301.256, 307.178, and 578.120, RSMo 1986, and sections 301.250, 301.251, 301.252, 301.253, 301.257, 301.258, and 301.350, RSMo Supp.1987, relating to motor vehicles, and to enact in lieu thereof sixteen new

sections relating to the same subject, with penalty provisions and an effective date.

It contains the language, “Be it enacted by the General Assembly of the State of Missouri, as follows[.]” Its enacting clause reads: “Section A. Sections 301.254, 301.255, 301.256, 307.178, and 578.120, RSMo 1986, and sections 301.250, 301.251, 301.252, 301.253, 301.257, 301.258, and 301.350, RSMo Supp.1987, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 301.350, 307.178, 578.120, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, to read as follows[.]” This law may be found in Laws of Missouri 1988,¹⁴ p. 798 et seq., or on Westlaw by scrolling to the “credits” section beneath the language of the statute itself, where a link to “L.1988, H.B. No. 1512, § A(§ 7), eff. Jan. 1, 1989” is found.¹⁵

Section 575.130 was originally enacted in 1977 by the 79th General Assembly at its First Regular Session. Its official title is far too long to repeat here, as it consists of nearly two single-spaced pages of statutes that were repealed and enacted (or re-enacted) by the law. However, § 556.011 denotes its short title as “The Criminal Code.” It also contains the language, “Be it enacted by the General Assembly of the State of Missouri, as follows[.]” It also has an enacting clause of similar if not greater length than the official title. It may be found in Laws of Missouri 1977 at p. 662 et seq.¹⁶ It is not available on Westlaw, but is published in “Laws of Missouri, 1977.” Therefore, we cannot agree with Delgrosso’s argument that the laws are invalid for lack of titles or enacting clauses.

¹⁴ The Missouri Laws books are typically available in a well-stocked Missouri law library, although many such libraries now rely on Lexis or Westlaw to provide session laws, and consequently do not have a full set of these books.

¹⁵ In Westlaw, there are also links to the session laws where amendments to § 301.562 were enacted. We cannot say whether the Lexis version of § 301.562 has this feature, as we do not subscribe to that service. Session laws are sometimes cited according to the House or Senate Bill number and the year of passage. For instance, this law is sometimes cited “1988 H.B. 1512.”

¹⁶ Also cited as “1977 S.B. 60.”

Discretion

Delgrosso's appeal vests in this Commission the same degree of discretion as the Director, and we need not exercise it in the same way.¹⁷ The only evidence we heard regarding the facts and circumstances behind Delgrosso's conviction for simulating legal process was presented by Delgrosso. He testified under oath that the conduct resulting in the charge against him arose from a dispute over a utility bill that escalated into a criminal charge, an agreement to plead guilty to § 575.130, and a suspended imposition of sentence. By contrast, the Director chose to rest his argument for denial on the technical argument that the essential elements of § 575.130 included fraud and dishonesty.

While we were left with more questions than answers regarding the events behind his conviction, we were persuaded that Delgrosso sincerely felt that the denial of licensure was unjust, and put forward a number of vigorous arguments against such denial. Weighing the relatively minor offense in question, the energetic way Delgrosso put forward his case both before, during, and after the hearing, and the Director's disinclination to put forward more than perfunctory reasons for denial of licensure, we exercise our discretion and find in Delgrosso's favor.

Summary

We exercise our discretion, conclude that Delgrosso is entitled to be shown as an owner of MAG on MAG's motor vehicle license, and order the Director to issue a license accordingly.

SO ORDERED on July 2, 2013.

\s\ Nimrod T. Chapel, Jr.
NIMROD T. CHAPEL, JR.
Commissioner

¹⁷*Finch*, 514 S.W.2d at 614.