

TEXAS TRANSPORTATION COMMISSION

HARRIS County

MINUTE ORDER

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HOUSTON District

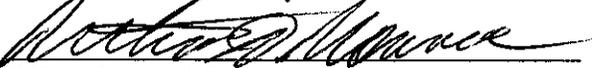
On July 22, 2004, the Texas Department of Transportation (department) revoked salvage vehicle dealer license No. 101630887, which was held by Arturo Castro dba Castro Imports. Mr. Castro filed a petition for an administrative hearing under the contested case rules of the Texas Transportation Commission (commission). The matter was referred to the State Office of Administrative Hearings. A Proposal for Decision, together with findings of fact and conclusions of law, was issued. The Proposal for Decision concluded that the revocation of the license should be overturned. Department staff filed exceptions.

Under the Administrative Procedure Act and the commission's rules, the matter is now appropriate for entry of a final order by the commission.

IT IS THEREFORE ORDERED that the commission hereby issues the attached order in the case of Texas Department of Transportation v. Arturo Castro dba Castro Imports, SOAH Docket No. 601-05-0886. The order revokes the license.

The executive director is directed to take the necessary steps to implement this order.

Submitted and reviewed by:

  
Office of General Counsel

Recommended by:

  
Executive Director

**10156 JUL 28 05**

Minute Number      Date Passed

**SOAH DOCKET NO. 601-05-0886**

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

**V.**

**ARTURO CASTRO D/B/A  
CASTRO IMPORTS**

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**BEFORE THE  
TEXAS TRANSPORTATION  
COMMISSION**

**ORDER**

This case was considered by the Texas Transportation Commission (Commission) on July 28, 2005.

After proper notice was given, the case was heard by an Administrative Law Judge who made and filed a proposal for decision containing findings of fact and conclusions of law. The proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies.

The Commission, after review and due consideration of the proposal for decision and exceptions, adopts the findings of fact and conclusions of law set forth below. All proposed findings of fact and conclusions of law submitted by any party are denied unless they are specifically adopted in this Order.

**FINDINGS OF FACT**

1. Arturo Castro d/b/a Castro Imports held Salvage Vehicle Dealer License No. 101630887 issued by the Texas Department of Transportation (Department).
2. On July 22, 2004, the Department notified Mr. Castro that it had revoked his license because he had been convicted of a felony.
3. On August 2, 2004, Mr. Castro requested a hearing on the revocation of his license.
4. On October 1, 2004, the Department referred this matter to the State Office of Administrative Hearings (SOAH) for hearing.
5. On October 1, 2004, the Department provided notice of the hearing to Mr. Castro. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a general reference to the sections of the statutes and rules involved; and a short, plain statement of the matters asserted. The notice did not inform Mr. Castro that the provisions of Chapter 53 of the Texas Occupations Code applied.

6. A preliminary hearing was conducted on November 15, 2004 by Administrative Law Judge (ALJ) Kerry D. Sullivan. The Department was represented by Assistant Attorney General Gregory Hart. Mr. Castro appeared and requested a continuance to allow him time to hire an attorney.
7. At the preliminary hearing, the ALJ orally notified the parties of the potential applicability of Chapter 53 of the Texas Occupations Code to this proceeding.
8. The hearing on the merits was continued to December 15, 2004.
9. On June 25, 2004, Mr. Castro was convicted of felony driving while intoxicated (third offense). According to DPS records, he was sentenced to zero years confinement and six years community supervision.
10. Mr. Castro spent approximately one month confined in the Harris County Jail following his conviction, apparently as a condition of his community supervision.
11. The purpose for requiring vehicle salvage rebuilders to be licensed is to reduce auto theft and "chop shop" activities.
12. Issuance of a vehicle salvage dealer license would not offer an opportunity for Mr. Castro to engage in further criminal activity associated with driving while intoxicated.
13. Mr. Castro's driver's license is currently suspended.
14. The duties and responsibilities of a vehicle salvage rebuilder are not connected with the sale or transportation of alcoholic beverages.
15. Mr. Castro's felony conviction does not indicate dishonesty. However, Mr. Castro's conviction occurred after initial issuance or renewal of his salvage vehicle dealer license, and less than three years have elapsed since the termination of the probation.

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. ch. 2302.
2. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. ch. 2003.
3. Staff had the burden of proof by a preponderance of the evidence.

4. In 1981, the Texas Legislature adopted law concerning a licensing agency's denial, suspension, or revocation of an occupational license when a person has been convicted of a crime. 67<sup>th</sup> Leg., R.S., ch. 267, 1981 (codified as TEX. REV. CIV. STAT. Art. 6252-13c). In 1995, the Legislature adopted law concerning the regulation of salvage vehicle dealers by the Department. 74<sup>th</sup> Leg., R.S., ch. 404, 1995 (codified as TEX. REV. CIV. STAT. Art. 6687-1a). The 1995 law required, among other matters, that the Commission adopt rules establishing the grounds for the denial, suspension, revocation, or reinstatement of a salvage vehicle dealer license. Art. 6687-1a, Section 4.01. In 1996, the Commission adopted rules to implement the 1995 law, including standards by which the Department would deny, suspend, or revoke a license when a person is convicted of a felony. 21 TEX. REG. 8963 (1989) (adopting 43 TEX. ADMIN. CODE §17.64). (The rule was later recodified as 43 TEX. ADMIN. CODE §17.81. 29 TEX. REG. 2691 (2004)). The 1981 law was later part of a nonsubstantive recodification which created (in part) Chapter 53 of the Texas Occupations Code. 76<sup>th</sup> Leg., R.S., ch. 388, § 7, 1999. The 1995 law was later part of a nonsubstantive recodification which created (in part) Chapter 2302 of the Texas Occupations Code. 77<sup>th</sup> Leg., R.S., ch. 1421, § 5, 2001. The ALJ did not properly interpret applicable law in this case when he concluded the Department's rules violate Chapter 53. Rather, the Commission's rule, 43 TEX. ADMIN. CODE §17.81, was adopted pursuant to the 1995 law (now TEX. OCC. CODE § 2302.108) and does not contradict the 1981 law. A licensing agency subject to the requirements of Chapter 53 may adopt additional requirements by rule as authorized by the agency's enabling legislation and enforce them. Op. Tex. Att'y Gen. No. GA-0064 (2003); Op. Tex. Att'y Gen. No. JC-0130 (1999).
5. Mr. Castro's conviction is categorized as a third degree felony. The offense was enhanced to a felony because of the repeat nature of the crime. The crime is not one of moral turpitude, and it does not require a culpable mental state.
6. Based on Findings of Fact Nos. 9 - 15, Mr. Castro's criminal conviction is not directly related to the vehicle storage rebuilder occupation, as contemplated by TEX. OCC. CODE ANN. §§ 53.021 and 53.022.
7. Confinement in a county jail as a condition of community supervision does not constitute "imprisonment" as contemplated by TEX. OCC. CODE ANN. § 53.021(b). Op. Tex. Att'y Gen. No. GA-0064 (2003).
8. Based upon the Findings of Fact and Conclusions of Law, Mr. Castro's vehicle salvage dealer's license should be revoked.
9. Mr. Castro's felony conviction occurred after initial issuance or renewal of his salvage vehicle dealer license, and less than three years have elapsed since the termination of the probation. The felony conviction shows Mr. Castro does not have a good business reputation and character. His license should be revoked pursuant to 43 TEX. ADMIN. CODE §17.81(b).

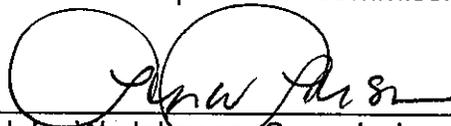
IT IS ORDERED that Salvage Vehicle Dealer License No. 101630887 held by Arturo Castro d/b/a Castro Imports is hereby REVOKED effective thirty days after this order is final and appealable under TEX. GOV'T. CODE § 2001.144. The revocation applies both to Mr. Castro and to any agents authorized by Mr. Castro pursuant to the license.

Signed on July 28, 2005.



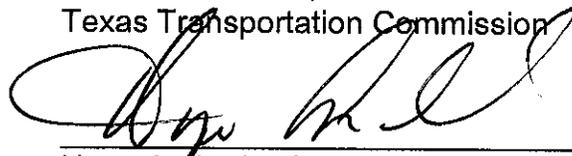
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Ric Williamson, Chair  
Texas Transportation Commission



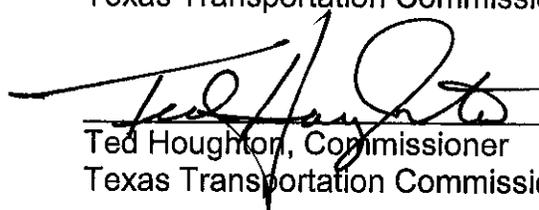
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John W. Johnson, Commissioner  
Texas Transportation Commission



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Hope Andrade, Commissioner  
Texas Transportation Commission



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Ted Houghton, Commissioner  
Texas Transportation Commission