

APR 08 2019

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE  
AUTO DEALER SERVICES DIVISION

INDIANA  
SECRETARY OF STATE

IN THE MATTER OF:

SCOTT KEEN,

Respondent.

)

) Cause No. DLR-1903-0034

)

)

)

---

**ORDER TO CEASE AND DESIST**

---

The Office of the Secretary of State—Auto Dealer Services Division (“Division”) filed a Petition for Order to Cease and Desist against Scott Keen (“Respondent”) alleging certain violations of Ind. Code § 9-32 (“Article”) as well as its associated sections contained within the Division’s administrative regulations (“Rules”), and requesting, *inter alia*, that the Division Director (“Director”) issue an order ordering Respondent to cease and desist from engaging in certain business activities pursuant to Ind. Code § 9-32-16-2, Ind. Code § 4-21.5-3, and 75 Ind. Admin. Code 6-2-10.

**I. FINDINGS OF FACT**

1. Respondent is an individual and is not licensed by the Division as a dealer. *See* Petition for Order to Cease and Desist in the Matter of Scott Keen ¶ 10; Exhibit A.
2. On August 24, 2018, a field examiner with the Division conducted an investigation at 1608 E. Southern Ave, Indianapolis, IN 46203 after receiving a complaint. *See* Petition ¶ 11; Exhibit A.
3. During the August 24, 2018 investigation, the field examiner observed multiple vehicles on the property at 1608 E. Southern Ave, Indianapolis, IN 46203. *See* Petition ¶ 12; Exhibit A.
4. During the August 24, 2018 investigation, the field examiner spoke with a person

that was present at the location, and who informed the field examiner that he was an employee for Respondent. *See* Petition ¶ 13; Exhibit A.

5. During the August 24, 2018 investigation, the field examiner asked Respondent's employee to have Respondent reach out to the Division as soon as possible. *See* Petition ¶ 14; Exhibit A.

6. On August 24, 2018 after the visit to 1608 E. Southern Ave, Indianapolis, IN 46203, Respondent called and spoke with the field examiner. *See* Petition ¶ 15; Exhibit A.

7. During the August 24, 2018 phone call with Respondent, Respondent informed the field examiner that the cars parked at 1608 E. Southern Ave, Indianapolis, IN 46203 were being stored for the dealer Victory Motorsports, located at 821 Chester Blvd, Richmond, IN 47374. *See* Petition ¶ 16; Exhibit A.

8. On September 18, 2018, the field examiner observed that Respondent had listed more than twelve (12) vehicles for sale on Respondent's Facebook page. *See* Petition ¶ 17; Exhibits B-I.

9. On September 21, 2018, the field examiner contacted a representative from Victory Motorsports, who informed the field examiner that Respondent was a former employee who had not worked at this dealership since March 2018. *See* Petition ¶ 18; Exhibit A.

10. Respondent is not currently licensed by the Division as a dealer and has not applied for a dealer license with the Division as of the date of this Petition for Order to Cease and Desist. *See* Petition ¶ 19; Exhibit A.

## II. CONCLUSIONS OF LAW

11. All Findings of Fact are incorporated by reference as Conclusions of Law, and all Conclusions of Law are incorporated as Findings of Fact.

12. The Director and Division have jurisdiction over the parties and the subject matter of this action. *See* I.C. § 9-32 (the “Article”).

13. Pursuant to Ind. Code § 9-32-16-2,

(b) If the secretary finds that an order is in the public interest and subsection (c) authorizes the action, an order issued under this article may deny, revoke, suspend, condition, limit, or permanently bar the granting of a license or endorsement or issuing of a license plate to or an application for a license, endorsement, or license plate from a dealer, owner, dealer manager, or a person having a similar status or performing similar functions as a dealer, or a person directly or indirectly in control of the dealer....

(c) A person may be disciplined under this section if the person:  
(2) knowingly violated or knowingly failed to comply with this article, or its predecessor, within the previous ten (10) years; ....

14. Pursuant to 75 Ind. Admin. Code § 6-2-10, the Director, as the Secretary’s designee has, *inter alia*, the authority to issue “an order to cease and desist all business activities to be issued by the secretary of state.”

15. 75 Ind. Admin. Code 6-2-10 provides, in relevant part:

A person engaged in the activities as identified in IC 9-32 must be properly licensed to carry out those activities and functions. Failure to obtain a license or engaging in activities that require a license while a license issued under IC 9-32 is suspended or revoked by the secretary of state shall be cause for an order to cease and desist all activities to be issued by the secretary of state.

16. Respondent failed to obtain a dealer license, as required by the Division, before engaging in activities for which it is required to be licensed under Ind. Code § 9-32, including offering more than twelve (12) vehicles for sale within a twelve (12) month period.

17. Ind. Code § 9-32-11-1(a) requires a dealer to be licensed “to engage in the business of buying, selling, or manufacturing motor vehicles.”

18. Ind. Code § 9-32-2-9.6(a) provides the following definition of dealer:

“Dealer” means, except as otherwise provided in this section, a person that:  
(1) sells;  
(2) offers to sell; or  
(3) advertises for sale;  
including directly by the Internet or another computer network, at least twelve (12) motor vehicles within a twelve (12) month period.

### **III. ORDER**

The Director, having reviewed the Petition for Order to Cease and Desist against Respondent and being duly advised, finds that grounds exist under the Article for issuing an order requiring Respondent to cease and desist from selling, offering to sell, or advertising to sell motor vehicles without a license issued by the Division as required by Ind. Code § 9-32-11-1.

Therefore, pursuant to 75 Ind. Admin. Code 6-2-10, the Director ORDERS that Respondent cease and desist all business activities related to buying and selling motor vehicles as identified in Ind. Code § 9-32.

**The Respondent may appeal this Order by submitting a written request for a hearing date pursuant to Ind. Code § 9-32-16-2(d). The matter will be set for a hearing within fifteen (15) business days after receipt of such request. Unless otherwise provided in the Article, all hearings relating to violations of the Article will be governed by the Indiana Administrative Orders and Procedures Act, Ind. Code § 4-21.5-3.**

**Pursuant to I.C. § 9-32-16-2(d), “If a hearing is not requested and no hearing is ordered by the Secretary within (30) days after the date of service of the order, the order becomes final by operation of law.” See I.C. § 4-21.5-3-28. This Order shall be deemed final unless Respondent files a request for hearing within a reasonable time not to exceed thirty (30) days from the date of service. The Director further finds that such an order is in the public interest pursuant to the authority granted her in I.C. § 9-32-16-2.**

The Director further advises that the Respondent may submit a written request for an earlier hearing date pursuant to I.C. § 9-32-16-2(d). This matter will be set for a hearing within fifteen (15) business days after receipt of such request. Unless otherwise provided in the Article, all hearings relating to violations of the Article will be governed by I.C. § 4-21.5-3.

Judicial review of a final order is available and is governed by the provisions of I.C. § 4-21.5-5. Pursuant to I.C. § 4-21.5-5-5, "a petition for review is timely only if it is filed within thirty (30) days after the date that notice of the agency action that is the subject of the petition for judicial review was served."

ORDERED at Indianapolis, Indiana this 8<sup>th</sup> day of April, 2019.



CONNIE LAWSON  
INDIANA SECRETARY OF STATE

RACHAEL EHLICH  
DIVISION DIRECTOR

Distribution:

Scott Keen  
1608 E. Southern Ave  
Indianapolis, IN 46203

Erin Filban  
Enforcement Attorney, License No. 34589-49  
Indiana Secretary of State Connie Lawson  
Auto Dealer Services Division  
302 West Washington Street, Room E-111  
Indianapolis, IN 46204  
[efilban@sos.in.gov](mailto:efilban@sos.in.gov)

## **AFFIDAVIT OF SERVICE**

Christina Schnaith, Legal Assistant, being duly sworn, states that she served the attached and forgoing **ORDER TO CEASE AND DESIST** upon Respondent, by U.S. First Class Mail, Postage Prepaid and addressed as follows:

**SCOTT KEEN  
1608 E SOUTHERN AVE  
INDIANAPOLIS, IN 46203**

On this 8th, of April, 2019

A copy was also sent electronically to Erin Filban of the Auto Dealer Services Division.

*Christina Schnaith*  
Affiant