Police Dep't v. Neiss

OATH Index No. 2094/09, mem. dec. (Feb. 9, 2009)

In vehicle forfeiture proceeding, ALJ found that claimant failed to provide proof she was the registered or titled owner under *Krimstock*. Vehicle ordered retained.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
POLICE DEPARTMENT
Petitioner
- against -
MARGARET NEISS
Respondent

MEMORANDUM DECISION

JOHN B. SPOONER, *Administrative Law Judge*

The petitioner, the Police Department, brings this proceeding to determine its right to retain a vehicle seized as the alleged instrumentality of a crime pursuant to section 14-140 of the Administrative Code. The respondent, Margaret Neiss, asserts that she is the owner of the seized vehicle. This proceeding is mandated by *Krimstock v. Kelly*, 99 Civ. 12041, third amended order and judgment (S.D.N.Y. Sept. 27, 2007). *See generally Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002), *cert. denied sub nom. Kelly v. Krimstock*, 539 U.S. 969 (2003); *County of Nassau v. Canavan*, 1 N.Y.3d 134 (2003).

The vehicle in issue, a 1996 Chevrolet Caprice, NYPD voucher number B194394, was seized by the Department on December 12, 2008, in connection with the arrest of Bruce Apatano for criminal possession of a controlled substance in the third degree. On December 23, 2008, the respondent Margaret Neiss, through her attorney, detailed below, submitted a demand for a hearing to the Department. Despite repeated requests from the attorney, no hearing was scheduled until January 26, 2009. This date was adjourned at the request of both sides to February 2, 2009. At the hearing, petitioner challenged respondent's standing and legal ownership of the vehicle, while respondent asserted the claim of being an innocent owner. On February 5, 2009, both parties submitted evidence and legal memoranda principally on the issue of whether Ms. Neiss was the legal owner.

As set forth below, I conclude that the vehicle should be retained because respondent failed to establish that she is the legal owner under *Krimstock*.

ANALYSIS

In the instant case, the Department sought to retain the seized vehicle, contending that respondent was neither the titled nor the registered owner and therefore lacked standing to seek the vehicle's release. For her part, respondent asserted that she was the legal owner and challenged the timeliness of the retention hearing. Although she did not dispute the probable cause for Mr. Apatano's arrest, she claimed to be an innocent owner.

The facts regarding the seizure of the vehicle and also the contacts between respondent and the Department are largely undisputed. After the vehicle was seized on December 12, 2008, Mr. Apatano apparently told Ms. Neiss about it and, on December 23, 2008, she submitted to the Department a request for a hearing form, signed by her attorney. On the same day, a representative of the Department mailed to respondent's attorney a letter stating that Ms. Neiss "does not, according to our records, appear to have any authorization to request a hearing" because she is neither the "titled" nor the "registered" owner. The letter requested "supporting documentation" for Ms. Neiss's claim of ownership. In addition, according to the post-hearing memoranda, a paralegal from the Department contacted respondent's attorney and indicated that documents supporting her claim of ownership would be required before a hearing would be scheduled.

On January 13, 2009, respondent's attorney submitted some five documents (Pet. Ex. 1). These documents included a certificate of title in the name of the original registered owner, Edward Fusco, with a handwritten transfer of title, dated September 11, 2008, to M. Samandarov of Tree of Life Inc.; a MV-50W transfer form, also dated September 11, 2008, from Mr. Samandarov to Rafael Valdez of 1330 USA Auto Part Inc.; a September 11, 2008, sales receipt from 1330 USA Auto Parts Inc., to Ms. Neiss listing the sales price as $500; and another MV-50 transfer form from Mr. Valdez to Ms. Neiss. This last form is signed by Mr. Valdez and Ms. Neiss on December 8, 2008, and lists the date of sale as September 25, 2008.

Approximately two days after receiving these documents, petitioner scheduled a hearing at OATH for January 26, 2009. This hearing was adjourned at the request of both parties to February 2, 2009.

As a threshold matter, petitioner challenges whether Ms. Neiss possesses standing to seek release of the vehicle and contends that her documentary proof falls short of showing legal ownership. Petitioner points out that, pursuant to New York law, owners of motor vehicles are required to obtain a certificate of title to a vehicle, Veh. & Traf. Law § 2104 (a) (Lexis 2009), and this certificate is a required document in order to transfer title of a vehicle from one owner to another. Veh. & Traf. Law § 2113 (Lexis 2009).

I find that documents offered by Ms. Neiss are insufficient to prove ownership as required under *Krimstock.* Pursuant to the *Krimstock* Order, the claimant at a *Krimstock* hearing must be "the person from whom the vehicle was seized" or the "owner." Preference is to be given to the "registered owner." *Krimstock v. Kelly*, 99 Civ. 12041, third amended order and judgment ¶6 (S.D.N.Y. Sept. 27, 2007). In several cases, this tribunal has interpreted an "owner" under *Krimstock* to mean the titled or registered owner. *See Police Dep't v. Green*, OATH Index No. 1347/08, mem. dec. at 2 (Jan. 9, 2008); *Police Dep't v. Scott*, OATH Index No. 169/07, mem. dec. (Sept. 1, 2006); *Police Dep't v. Leclerc*, OATH Index No. 1707/06, mem. dec. (June 14, 2006). Individuals whose claims of ownership derive from records other than a certificate of title or a Department of Motor Vehicles registration have consistently been found to lack standing to seek a vehicle's release. *See Police Dep't v. Wicks*, OATH Index No. 805/08, mem. dec., at 2 (Dec. 12, 2007) (claimant had no standing to seek release after title had been taken by the lien holder); *Police Dep't v. Lord*, OATH Index No. 770/08, mem. dec., at 3 (Oct. 22, 2007) (after signing over title to lien holder, claimant no longer had standing to contest Department's retention of vehicle).

The documents offered by respondent fall short of establishing that she is the legal owner of the vehicle under New York State law. According to the Department of Motor Vehicles records (Pet. Ex. 8), the registered owner continues to be Mr. Fusco, while, according to the only certificate of title offered, the titled owner is apparently the Tree of Life car dealership, the entity to whom Mr. Fusco transferred his title. At best, Ms. Neiss is in possession of various documents which may, at some future date, persuade the Department of Motor Vehicles to recognize her as the owner and either register her as such or issue a certificate of title in her name. However, currently she is not the owner of the vehicle as defined in the *Krimstock* order and therefore lacks the requisite standing to demand that the Department return the vehicle to her.

In her post-hearing memorandum, counsel for respondent relies upon the case of *Dobson v. Gioia*, 39 A.D.3d 995 (3rd Dep't 2007) for the proposition that claimants with neither title nor registration may ultimately be found to be the owner of a vehicle. In that case, Court ruled that a triable issue existed as to whether the husband of the titled owner of a boat was a *de facto* owner and potentially liable for injuries to a child who was injured riding in the boat. Clearly, *Dobson*, involving ownership liability in a personal injury action, has little applicability here in determining the meaning of owner under a specific federal court order. In fact, this state court case supports my conclusion that the legal conundrum of who has title to the seized vehicle here would best be resolved in the civil forfeiture action in state Supreme Court, rather than in this retention hearing.

Thus, because Ms. Neiss failed to establish that she is the owner, she is not entitled to recover the seized vehicle and it is not necessary to consider the further issues of whether Mr. Apatano is the beneficial owner or whether she is an innocent owner.

One further matter bears mention. I note that, in this case, the Department scheduled the retention hearing more than 10 days after receiving the hearing request. The initial hearing request by respondent's attorney was received on December 23, 2008, and the first hearing was set for January 26, 2009, more than 10 business days later. In its post-hearing memorandum, petitioner argues that the running of the 10 days should be tolled by its request for documents proving Ms. Neiss's claim of ownership: "Scheduling hearings for any claimant without proof that the vehicle was seized from the claimant or that the claimant has an ownership interest in the vehicle would be a waste of administrative and judicial resources and would be contrary to the intentions of *Krimstock*." No legal authority is offered for this contention.

In fact, I find that the language of the *Krimstock* Order appears to preclude the Department from extending the 10-day time period in this manner. The Order provides,

> The claimant of a seized vehicle has the right to a hearing at OATH, which will commence on a date and at a time, as fixed by the Police Department within 10 business days after receipt by the Police Department of a written demand for such a hearing on the form to be provided by the Police Department and in accordance with the instructions set forth thereon, *unless the date for such hearing shall have been extended by OATH upon a showing of good cause by either party* [emphasis added].

Krimstock v. Kelly, 99 Civ. 12041, third amended order and judgment ¶5 (S.D.N.Y. Sept. 27, 2007). Thus, under the *Krimstock* Order, the method by which the Department may schedule the hearing more than 10 days from the date of the hearing request is by seeking a finding of good cause from an OATH judge. No such application was apparently made in this case and, therefore, had Ms. Neiss been able to establish her ownership of the vehicle being held, she would likely have been entitled to obtain its release due to the Department's failure to comply with the timeliness provisions of the *Krimstock* Order.

Prior OATH cases also suggest that the Department's interpretation should be rejected. Several OATH decisions have held that the *Krimstock* notice requirements are to be strictly construed against the Police Department. *See, e.g., Police Dep't v. Smith*, OATH Index No. 1796/07, mem. dec. at 2 (May 21, 2007); *Police Dep't v. Rosario-Jimenez*, OATH Index No. 2235/07, mem. dec. at 2 (July 3, 2007). And on somewhat similar facts, this tribunal rejected the Department's contention that an incomplete hearing request could justify tolling the 10-business-day hearing requirement. In *Police Dep't v. Manning*, OATH Index No. 1162/05, mem. dec. at 4-5 (Jan. 25, 2005), the Department also contended that a delay in scheduling the hearing was excused by its need to collect information missing from the request form, including the precinct of arrest and the arresting officer's name, or in the alternative, that the delay was rendered harmless. This tribunal rejected this argument, holding that additional time for scheduling a hearing past the 10-day period mandated by *Krimstock* may occur only upon a determination by an OATH judge, after a showing of good cause. *Id.* at 4. Although petitioner here contends that the hearing request form was "incomplete," petitioner does not indicate that the information supplied on the form, which included a full description of the vehicle seized, the name of the driver arrested, and the date and precinct of the arrest, were insufficient to identify the vehicle and the relevant arrest documents. *Cf. Police Dep't v. Cortorreal*, OATH Index No. 1479/06, mem. dec. (Mar. 29, 2006) (where request form was not mailed to correct address and did not contain sufficient identification information such as the date and location of arrest, the arresting officer, the make, year and identification number of the vehicle that was seized, or the voucher number, the 10 days did not begin running until the necessary information was supplied). There thus seems to be no basis to find the request to be invalid or insufficient to require a hearing within 10 days as mandated by *Krimstock.*

ORDER

In sum, I find that, in light of respondent's failure to establish that she is the owner of the seized vehicle, the Department may retain vehicle voucher number B194394, VIN number 1HGCG56722A142391, pending the outcome of a civil forfeiture action.

John B. Spooner
Administrative Law Judge

February 9, 2009

APPEARANCES:

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