JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-03-19-009 / NOT PRECEDENTIAL**
ID: **SJ970020 / M9700126**
DATE: **03-19-98**
DISPOSITION: **DENIED**
TAX TYPE: **VESSEL AND MOTOR REGISTRATION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the record of the proceedings held on January 6, 1998, and the exhibits received into evidence, the undersigned finds:

1. On or about June 24, 1997, Complainant entered into a Standard Marine Purchase Agreement (hereinafter "Agreement") with Respondent for the purchase of a 1998 Beachcomber 24-foot pontoon fishing boat, a 1997 Johnson 90 HP outboard motor, and a 1997 Norshell 24-foot trailer.

2. The Agreement lists both boat and motor as "new."

3. Due to problems in obtaining the Johnson motor, the parties agreed to the purchase and sale of a "new" 1996 Evinrude 115 HP outboard motor.

4. Complainant admits that he was advised by Respondent that Respondent was not a new motor dealer. Complainant, however, demanded receipt of a Manufacturer's Statement of Origin (hereinafter "MSO") for the motor. The testimony of Respondent indicates that he agreed to Complainant's demand, but was unable to comply therewith due to the franchise laws of the State of Oklahoma.

5. Respondent purchased the 1996 Evinrude 115 HP outboard motor from ANONYMOUS MARINE, INC., IN ANOTHER STATE. The purchase invoice does not indicate whether the motor was new or used. For all intent and purposes, Complainant cannot prove that the motor is not new. He admits that he saw the motor in its packing case and that it looked new.

6. Respondent admits that when the motor was purchased from ANONYMOUS MARINE, INC., Respondent requested that the MSO be left open so that Respondent could transfer it to Complainant. The MSO, however, was brought up in Respondent's name. Thereafter, Respondent brought up the title to the motor in his name and assigned the title to Complainant.

7. Complainant argues that because he did not receive an MSO with the motor he received a used motor. Complainant also argues that Respondent misrepresented the terms and conditions of the purchase by agreeing to provide him with a MSO when in fact Respondent could not legally provide him with a MSO.

8. Respondent argues that he advised and Complainant was fully aware at the time of entering into the Agreement that Respondent was not a new motor franchise dealer. Respondent also argues that Complainant received what he bargained for - a new motor.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes that jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission, 63 O.S. 1991, § 4042; that the license of a new and used boat and motor dealer may be suspended or revoked or a fine not to exceed Five Hundred Dollars per day may be imposed against a dealer for a violation of any of the provisions of Section 4041 of the Oklahoma Vessel and Motor Registration Act, 63 O.S. 1991 § 4001 et seq.; that the evidence does not prove Respondent failed or refused to perform any written agreement with Complainant, 63 O.S. 1991, § 4041(5)(d); that the evidence proves Respondent misrepresented the terms and conditions of the sale in that Respondent agreed to provide a MSO to Complainant when in fact Respondent could not legally provide a MSO, 63 O.S. 1991, § 4041(5)(f); and that the fact and circumstances of this case do not warrant the imposition of a fine or the revocation or suspension of Respondent's dealership license since Complainant cannot prove that he did not receive what he bargained for - a new 1996 Evinrude 115 HP outboard motor.

DISPOSITION

THEREFORE, IT WAS DETERMINED that the Tax Commission under the discretionary authority of the statute refrain from taking any action of revoking or suspending the license of or imposing a fine against RESPONDENT, upon the complaint of COMPLAINANT. It WAS further DETERMINED that RESPONDENT, be put on notice that any similar violations of the provisions of the statute subsequent to the issuance of this decision shall result in the imposition of a sanction authorized by Section 4041.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.