JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-07-10-022 / NOT PRECEDENTIAL**
ID: **SJ000004**
DATE: **07-10-01**
DISPOSITION: **APPLICATION GRANTED / PROTEST DENIED**
TAX TYPE: **BOAT AND MOTOR / DEALER LICENSE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 14th day of May, 2001, the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to AN Administrative Law Judge. A hearing was had, at which hearing the Applicant appeared by and through its representative; Protestant appeared by and through its representative; Distributor, XYZ Corporation appeared by and through its counsel; and the Oklahoma Tax Commission, Taxpayer Assistance Division, appeared by and through its counsel, AN Assistant General Counsel, General Counsel's Office. Applicant and XYZ CORP submitted a *Motion to Quash/Strike Protest* pursuant to 68 O.S. § 1212(c), attaching thereto a Certificate of Suspension issued by the Oklahoma Secretary of State dated July 17, 2000, and showing Protestant as a suspended Oklahoma corporation. The Division representatives made a review of Tax Commission records and determined that Protestant had been reinstated effective July 18, 2000, and the *Motion to Quash/Strike Protest* was denied. Testimony was heard and exhibits admitted into evidence, and upon the submission of briefs in support of the protest, this case was submitted for decision.

FINDINGS OF FACT

1. "Protestant" became an authorized "full line" dealer of XYZ-brand outboard motors approximately five to six years prior to this proceeding. In addition, Protestant carries other product lines, including ABC-brand outboard motors and OTHER BRANDS OF motors, and certain brands of boats. Protestant's dealership is currently located IN ANONYMOUS, Oklahoma, where it has been located for at least five to six years.

2. On or about November 9, 1994, Protestant entered into a Sales and Service Agreement (hereinafter "Dealer Agreement") with XYZ CORP, becoming an authorized dealer of the full line of XYZ-brand of outboard motors. Paragraph 1.4 of the Dealer Agreement provides that PROTESTANT's status as a dealer is "nonexclusive" and XYZ CORP reserves the right to appoint additional dealers of any or all products at any time.

3. The various Product Addendum to Protestant's Dealer Agreement are dated October 30, 1995, for renewal through December 31, 1996, and renewed each year thereafter through the current renewal through December 31, 2000, and covers XYZ-brand outboard motors.

4. Protestant has a New and Used Boat and Motor Dealer License issued on January 20, 2000, by the Oklahoma Tax Commission at the ANONYMOUS, Oklahoma, location. This license includes the XYZ-brand of outboard motors as well as ABC AND OTHER BRANDS OF outboard motors manufactured by ANOTHER MANUFACTURER and boats under SEVERAL BRAND NAMES.

5. By letters dated April 5, 2000, APPLICANT notified the Oklahoma Tax Commission and PROTESTANT of its intent to enter into a Dealer Agreement with XYZ CORP to sell packaged XYZ CORP outboard motors at ANONYMOUS, Oklahoma. The letters of April 5, 2000, state the proposed Dealer Agreement between APPLICANT and XYZ CORP will only apply to the sale of XYZ CORP outboards packaged with a boat and that APPLICANT is not seeking authorization or does not intend to sell loose XYZ CORP engines. The letter was received by the Tax Commission and by PROTESTANT. Copies of these two letters were sent to INDIVIDUALS AT XYZ CORP.

6. By letter dated April 11, 2000, PROTESTANT made a written protest to the Oklahoma Tax Commission of APPLICANT's notification to establish APPLICANT as a new XYZ CORP "packaged" outboard motor dealer. The protest letter is addressed to XYZ CORP at its California offices and in part provides: "As an established XYZ CORP Dealership within the fifteen mile radius, it is within our rights to protest this potential agreement whether the intention of loose or pre-rigged XYZ CORP motors are involved. This letter of protest has been sent to Oklahoma Tax Commission, XYZ Corporation and APPLICANT via Registered Mail."

7. On or about August 30, 1999, APPLICANT signed AN XYZ CORP Sales and Service Agreement (hereinafter "Dealer Agreement") under the terms of which APPLICANT would be appointed as an authorized dealer for XYZ-brand outboard motors at the ANONYMOUS, Oklahoma, location. The Dealer Agreement is contingent upon the Oklahoma Tax Commission's issuance of a license to APPLICANT at the location indicated and upon the acceptance by XYZ CORP.

8. The Product Addendum to APPLICANT's Dealer Agreement dated August 30, 1999, limits the XYZ-brand products to be handled by APPLICANT to XYZ CORP outboard motors when purchased with certain boat brands, including MMM and NNN. APPLICANT intends to add the NNN and MMM brands of boats at the ANONYMOUS location.

9. On April 17, 2000, the Tax Commission issued a New and Used Boat and Motor Dealer License to APPLICANT for PPP boats.

10. APPLICANT is now making application to amend its existing New and Used Boat and Motor Dealer License to add XYZ CORP outboard motors to its authorized product line for the limited purpose of selling AN XYZ CORP outboard motor where it is prepackaged with certain brands of boats, including MMM-brand bass boats and NNN-brand pontoon boats.

11. Protestant lies within a fifteen mile radius of the proposed new dealer location for APPLICANT.

12. The relevant market area for purposes of 63 O.S. 1991, § 4037.1 includes all points within a fifteen square mile radius of the proposed new dealer.

13. On June 26, 2000, the Oklahoma Tax Commission issued its *Notice of Hearing* for July 18, 2000.

14. On or about July 18, 2000, XYZ CORP submitted a Memorandum of Authorities in Support of Application requesting the Oklahoma Tax Commission to issue a New and Used Boat and Motor Dealer License to APPLICANT pursuant to Section 4033 of Title 63. XYZ CORP supports the application of APPLICANT and is ready and able to move forward with AN XYZ CORP outboard dealer agreement with APPLICANT at the ANONYMOUS, Oklahoma, location where such outboards are proposed to be sold "packaged" with a certain brand of MMM boat or NNN boat.

15. A copy of the Memorandum of Authorities in Support of Application was served on Protestant prior to the scheduled hearing as shown by the certificates of service to the memorandum.

16. The permanency of APPLICANT's investment in the proposed new dealer ANONYMOUS location is evidenced by OWNER's ownership of the building and premises where the dealership is located. The building was built in 1999-2000 by THE OWNER to serve as the business premises of APPLICANT at ANONYMOUS, Oklahoma, on LARGE Lake.

17. The testimony and evidence establish that APPLICANT has the requisite financial standing and business integrity to support the issuance of the New and Used Boat and Motor Dealer License requested.

18. The testimony and evidence further demonstrate and establish APPLICANT's ability to properly conduct the business for which the New and Used Boat and Motor Dealer License has been requested, namely, to sell and service XYZ-brand outboard motors when sold in a package with MMM bass boats and NNN pontoon boats.

19. The sum of the testimony heard and evidence admitted as set forth in the record herein establishes that the public interest and public welfare will not only be sufficiently safeguarded but also enhanced upon the issuance of the requested New and Used Boat and Motor Dealer License to APPLICANT.

20. The testimony and evidence establish that the dealer agreement to be executed by and between APPLICANT and XYZ CORP complies with the provisions of the Oklahoma Vessel and Motor Registration Act.

21. The testimony and evidence as reflected in the record establishes that APPLICANT currently maintains a display area capable of regularly displaying at least three boats and motors, as evidenced by the showroom display area square footage of approximately 14,000 square feet, plus the outside lot used for display as well as boat storage.

22. The testimony and evidence herein as reflected in the record establishes that APPLICANT will exceed the "substantial sales" requirement of five or more boats and motors per year as set forth at 63 O.S. Supp. 1993, § 4033(B)(1)(b) upon the issuance of the requested New and Used Boat and Motor Dealer License.

23. The testimony and evidence in the record establish that the APPLICANT dealer establishment permanently located at the ANONYMOUS, Oklahoma, location is clearly identified to the public, as evidenced by a building sign showing the company logo and an advertisement of the location in the local yellow pages. The testimony and evidence further establishes that the APPLICANT dealership is clearly identifiable as an authorized boat and motor dealership to any person who may deal with APPLICANT with respect to XYZ-brand outboard motors packaged with MMM bass boats and NNN pontoon boats.

24. The testimony and evidence in the record establish that the APPLICANT dealership is located in a rural area south of the town limits of ANONYMOUS in ZZZ County, in an area that permits sales and other commercial operations.

25. The evidence as set forth in the record herein establishes that APPLICANT will conduct regular hours of operation during the "normal boating season" as that term is defined at 63 O.S. Supp. 1993, § 4033(B)(1)(e).

26. The testimony and evidence as set forth in the record herein demonstrate and establish the permanency of APPLICANT's investment in the proposed dealership location and facility.

27. The testimony and evidence as set forth in the record herein establish that the issuance of a New and Used Boat and Motor Dealer License to APPLICANT at the dealership location south of ANONYMOUS, Oklahoma, will have a positive effect on the retail outboard motor and boat business and the consuming public in the relevant market area and will not be injurious to the public welfare.

28. The testimony and evidence as set forth in the record herein establish that the issuance of a New and Used Boat and Motor Dealer License to APPLICANT as AN XYZ CORP outboard motor dealer, where such motor is packaged with a MMM bass boat or a NNN pontoon boat, will not be injurious to the public welfare.

29. The testimony and evidence as set forth in the record herein establishes that the sole new and used boat and motor dealer licensee authorized to sell XYZ-brand outboard motors within the relevant market area is PROTESTANT, which is a full line XYZ CORP outboard motor dealer.

30. The testimony and evidence as set forth in the record herein establishes that the issuance of New and Used Boat and Motor Dealer License to APPLICANT at the ANONYMOUS, Oklahoma, location for XYZ CORP outboard motors, when packaged with a MMM bass boat or a NNN Pontoon boat, will increase XYZ-brand awareness in the relevant market area and will not adversely impact PROTESTANT as a full line XYZ CORP outboard motor dealer.

ISSUES

I. Whether APPLICANT meets the statutory requirements for the issuance of a new and used boat and motor dealers license under the provisions of Section 4033 of Title 63 of the Oklahoma Statutes.

II. Whether under 63 O.S. 1991, § 4037.2 "good cause" exists for not permitting or licensing APPLICANT to sell XYZ-brand outboard motors packaged with MMM bass boats or NNN pontoon boats within a fifteen mile radius of the proposed new dealer location because an existing XYZ-brand full line outboard motor dealer, PROTESTANT, being located within the fifteen-mile radius.

III. Whether APPLICANT, as a proposed "new dealer", under 63 O.S. 1991, § 4037.1, has put on sufficient substantial evidence to meet its burden of proof showing that "good cause" does not exist for not permitting APPLICANT within the relevant market area.

CONCLUSIONS OF LAW AND RECOMMENDATIONS

1. The Oklahoma Tax Commission has jurisdiction to consider the application of APPLICANT for a New and Used Boat and Motor Dealer License pursuant to Sections 4033, 4037, 4037.1 and 4037.2 of Title 63 of the Oklahoma Statutes.

2. The Oklahoma Tax Commission has jurisdiction to consider the protest of PROTESTANT pursuant to 63 O.S. 1991, §§ 4037.1 and 4037.2.

3. Applicant is clearly recognizable as a bona fide new and used boat and motor dealer having satisfied the existing requirements of Section 4033(B)(1) of Title 63 of the Oklahoma Statutes.

4. Applicant APPLICANT's financial standing, business integrity, established place of business at the ANONYMOUS, Oklahoma, location and marine sales and service background support the issuance of New and Used Boat Dealer License at the ANONYMOUS location indicated for XYZ-brand outboard motors packaged with a MMM bass boat and NNN pontoon boats and the issuance of such license is consistent with the safeguarding of the public interest and the public welfare.

5. Applicant APPLICANT has a proposed dealer agreement with XYZ CORP to sell XYZ-brand outboard motors within the State of Oklahoma when packaged with MMM and NNN brands of boats.

6. The dealer agreement between APPLICANT and XYZ CORP is in compliance with the Oklahoma Vessel and Motor Registration Act as set forth at 63 O.S. Supp. 1993, §4037(A).

7. APPLICANT has carried its burden of proof that good cause does not exist for not issuing a New and Used Boat and Motor Dealer License at the ANONYMOUS, Oklahoma, location.

8. Applicant's request to establish a packaged XYZ CORP outboard dealership within the relevant market area should be granted.

9. Applicant's request to amend its new and used boat and motor license to engage in the business of selling and acting as a dealer of XYZ CORP outboard motors should be granted.

10. Protestant's protest should be denied.

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.