JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-07-10-023 / NOT PRECEDENTIAL**
ID: **SJ000012**
DATE: **07-10-01**
DISPOSITION: **APPLICATION DENIED / PROTEST SUSTAINED**
TAX TYPE: **BOAT AND MOTOR / DEALER LICENSE**
APPEAL: **OK SUP CT 96,717 / DISMISSED**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 23rd 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 counsel; PROTESTANT A appeared by and through its representative; PROTESTANT B appeared by and through its representative; and the Oklahoma Tax Commission, Taxpayer Assistance Division, appeared by and through its counsel, AN Assistant General Counsel, General Counsel's Office. Testimony was heard and exhibits admitted into evidence. Upon conclusion of the hearing, this case was submitted for decision.

FINDINGS OF FACT

1. APPLICANT has been authorized and licensed to sell ABC brand outboard motors manufactured by ABC Marine at its original location since 1982.

2. APPLICANT made application for a new and used boat and motor dealer's license for a second location on December 15, 1999, and paid the applicable fees. MR. A signed the application as owner.

3. APPLICANT was requesting to be licensed to sell and act as a dealer of the following boats, to wit: L, M, N, and O and the following motor, to wit: ABCX. The terms Nordic (boat) and ABC (motor) were stricken through on the application. The words "per Tracy" were noted next to Nordic but not ABC. The application was stamped issued January 12, 2000.

4. A memorandum dated October 13, 2000, from THE Supervisor, Special Plates, Taxpayer Assistance Division, to the Office of the Administrative Law Judge referenced a September 14, 2000, application of APPLICANT to sell ABC Outboard Motors at ITS ORIGINAL LOCATION and represented that THE SUPERVISOR requested and had not received a corrected application for NEW LOCATION. A copy of the September 14, 2000, application was not provided at hearing.

5. Although the Division represented at the hearing that APPLICANT Marine (sic) had made application to be licensed to sell and act as a dealer of ABC motors, a copy was not presented at hearing nor is one contained in the file.

6. Pursuant to 63 O.S. § 4037.1, PROTESTANT B, ANOTHER DEALER, and PROTESTANT A were notified by letter of APPLICANT's intent to establish AN ABC dealership at THE NEW LOCATION. Each of the locations notified are within 15 miles of the proposed location.

7. The Sales and Service Agreement between ABC Marine and OWNER OF APPLICANT indicates that APPLICANT has been appointed as a "packaged" dealer of ABC Outboard Motors and ABC Marine Accessories and Service Parts.

8. Both PROTESTANT A and PROTESTANT B protested the proposed issuance of a new vessel or new motor ABC dealership to APPLICANT at THE NEW LOCATION.

9. By letter dated November 14, 2000, the Oklahoma Tax Commission notified APPLICANT that it was unable to grant the request to add ABC outboard motors to the license for the business located at THE NEW LOCATION.

10. PROTESTANT A lies within a fifteen mile radius of the proposed new dealer location for APPLICANT.

11. PROTESTANT B 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 December 18, 2000, the Protestants and Applicant, as set out above, appeared in person and by counsel pursuant to the Notice of Hearing issued by the Administrative Law Judge.

14. Until May, 2000, APPLICANT was the sole dealer licensed to sell ABC outboard motors in the LARGE Lake area. Pursuant to Commission Order Numbers 2000-05-11-026 and 2000-05-11-027, respectively, licenses to sell ABC outboard motors were granted to PROTESTANT A and PROTESTANT B based on the ABC brand motor and the discontinued XXX brand motor being identical, except for brand name and color, and being a part of the same product line.

15. OWNER of APPLICANT testified that he purchased property at THE NEW LOCATION approximately two years ago with the intent of establishing AN ABC dealership at that location and about a year later, prior to the issuance of the additional licenses, purchased additional land and a building adjacent to the previously purchased property. THE OWNER added that he has invested approximately $300,000.00 in the location.

16. THE OWNER stated that boats with ABC motors have been displayed at the NEW LOCATION property after being advised by Tax Commission employees that he could do so as long as he did not sell the boats from that location. THE OWNER added that the public may view the products for sale and ascertain the price. However, to purchase any product, a prospective buyer must go to APPLICANT at THE ORIGINAL LOCATION to do any paper work, make a deposit, or finalize a purchase. No service facilities are provided at the new location.

ISSUES AND CONTENTIONS

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

II. Whether Applicant has sustained its burden of proving by a preponderance of the evidence that good cause exists for permitting the Applicant to establish the ABC dealership within the relevant market area.

III. Whether Applicant has sustained its burden of proving by a preponderance of the evidence that no good cause exists for denying the application to establish the ABC dealership within the relevant market area.

Applicant contends that he is opening a new location, not a new business; that APPLICANT has been in business for many years and the name "APPLICANT" is virtually synonymous with ABC products in the LARGE Lake area; and that there will not be a change in market effect by the issuance of the license. Applicant argues that the additional location in the relevant market area will increase competition by allowing the consumers the opportunity to compare prices.

Applicant contends that when he first purchased the property at THE NEW LOCATION with the intent to establish AN ABC dealership, the XXX brand motor had not been discontinued; that he was the exclusive licensed ABC dealer in the relevant market area; and, therefore, he did not anticipate anyone having the right to protest the application.

Applicant further contends that he was not in violation of Section 4033 because he was advised by Oklahoma Tax Commission representatives that he could store and display boats with ABC motors at the new location as long as they were not sold there.

Protestants contend that the application should be denied because Applicant has not established the statutory requirements for the issuance of a new and used boat and motor dealers license; Nor has Applicant sustained its burden of proof. In support of these contentions, Protestants argue that Applicant has violated the provisions of Section 4033 of Title 63 by displaying merchandise and representing himself as AN ABC dealer at THE NEW LOCATION without a current license for that location. Protestants further argue that an additional location licensed to sell ABC outboard motors will not increase competition and, since no service work is to be performed at the new location, the service needs of the customer will not be met.

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.

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

3. It is unlawful for any person to engage in the business of selling, serve in the capacity of or act as a dealer of new or used vessels and motors without first obtaining a license as provided by the Oklahoma Vessel and Motor Registration Act. 63 O.S. § 4033(A). Any person having more than one business location is required to obtain and hold a current license for each location. *Id.*

Protestants contend that Applicant's acts of storing and displaying ABC motors at the new location violated the provisions in Section 4033 and, therefore, Applicant should not be issued a license for that location. Applicant has been a licensed ABC outboard dealer since 1982 at THE ORIGINAL LOCATION and is currently in the process of obtaining a license for AN ABC packaged dealership at the new location. In the interim, Applicant stored and displayed merchandise at the new location.

Likewise, Protestant stated at the hearing that he also had ABC product in the showroom at PROTESTANT A's LOCATION in December, 1999, before receiving a dealer license. Based on the foregoing, the undersigned finds that Applicant's license request should not be denied on the grounds that Applicant acted in the capacity as AN ABC dealer without a license in violation of Section 4033 of Title 63.

4. However, Applicant failed to sustain his burden of proving that good cause exists to grant a license to establish AN ABC outboard dealership within the relevant market area and that no good cause exists for denying the application to establish AN ABC outboard dealership within the relevant market area. Applicant did not present any studies, statistical data or other probative evidence to show that the market can support another ABC dealership or whether the marine dealers in the relevant market area are providing adequate competition and convenient consumer care.

5. Applicant's request to establish a "packaged" ABC outboard dealership within the

relevant market area should be denied.

6. Applicant's request to amend its new and used boat and motor license to engage in the business of selling and acting as the dealer of ABC outboard motors should be denied.

7. The protests of Protestants should be sustained.

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.