JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-08-24-23
ID: SJ-04-012-H
DATE: AUGUST 24, 2004
DISPOSITION: DENIED IN PART/SUSTAINED IN PART
TAX TYPE: BOAT DEALERSHIP LICENSE
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A Corrected Notice of Hearing was mailed to the parties, MARINE COMPANY, ("Applicant"), through OFFICER, President, XYZ MARINA, through OWNER1, President and Owner, and ABC MARINA, through OWNER2, Owner, at their last known addresses by certified mail, return receipt requested.[1] The hearing on the application was scheduled for May 18, 2004, at 9:00 a.m. None of the parties appeared for the scheduled hearing and none of the parties have contacted the Office of the Administrative Law Judge. This matter was closed and submitted for decision on May 18, 2004.

FINDINGS OF FACT

Upon review of the file and records, the undersigned finds:

1. By letter dated February 17, 2004, the Applicant notified the Division that Mercury intended to grant the Applicant a Mercury brand dealership at the proposed business location of 123 FAKE STREET, ANYTOWN, Oklahoma.[2]

2. The Applicant notified the Division that ABC MARINA, XYZ MARINA, MARINE STORE operate existing Mercury dealerships within fifteen (15) miles of the Applicant's proposed business location of 123 FAKE STREET, ANYTOWN, Oklahoma.

3. The Applicant's letter dated February 17, 2004, states that as of the date of the letter, letters notifying the three (3) affected dealerships were mailed, and enclosed with the Applicant's letter, but they were not.[3]

4. By letter dated March 1, 2004, OWNER1, President/Owner of XYZ MARINA. ("Complainant") filed a protest to the proposed application.[4]

5. By letter dated March 4, 2004, OWNER2, Owner of ABC MARINA ("Complainant") filed a protest to the proposed application.[5]

6. No protest was received from MARINE STORE.

7. On April 16, 2004, a Corrected Notice of Hearing was sent the Applicant and the Complainants that the hearing on the application was set for May 18, 2004, at 9:00 a.m.

8. On May 18, 2004, at 9:00 a.m. the Applicant and the Complainants failed to appear for the scheduled hearing.

9. Neither the Applicant nor the Complainants have contacted the Office of the Administrative Law Judge concerning their failure to appear at the scheduled hearing.

ADDITIONAL FINDINGS OF FACT

1. On May 27, 2004, the Office of General Counsel contacted ComplainantOWNER1, President/Owner of XYZ MARINA and obtained a withdrawal of its protest to the Applicant operating a Mercury Dealership at 123 FAKE STREET, ANYTOWN, Oklahoma.[6]

2. The protest of Complainant, OWNER2, Owner of ABC MARINA has not been withdrawn.

ISSUES

The following constitute the issues as framed by the application and the protest thereto.

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

2. Whether the 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 Mercury dealership within the relevant market area.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject of this action.[7]

2. In the event that a dealer seeks to establish a new vessel or new motor dealership or relocate an existing vessel or motor dealership within or into a relevant market area where the same product line is then represented, the dealer shall notify the Tax Commission and each new vessel or new motor dealer of such product line in the relevant market area of the intention to establish or relocate a dealership within or into that market area.[8]

3. If a waiver of protest from each dealer within the relevant market area is not attached to the application for the new dealer seeking to establish, the Commission shall render a final decision no later than sixty (60) days after the Commission's receipt of the notice of protest.[9]

4. Within fifteen (15) days of receiving such notice such new vessel or new motor dealer may file with the Commission a protest to the establishing or relocating of the proposed new vessel or new motor dealership.[10]

5. In determining whether good cause has been established for not entering into or relocating an additional dealership for the same product line, the Tax Commission shall take into consideration the existing circumstances, including, but not limited to:

1. Permanency of the investment of the proposed dealership;
2. Effect on the retail new vessel or new motor business and the consuming public in the relevant market area;
3. Whether it is injurious to the public welfare for an additional new vessel or new motor dealership to be established;
4. Whether the new vessel or new motor dealers of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the new vessel or new motor and service facilities, equipment, supply of new vessel or new motor parts, and qualified service personnel; and
5. Whether the establishment of an additional new vessel or new motor dealership would increase competition, and therefore be in the public interest.[11]

6. In any hearing held pursuant to this section on additional dealerships or relocation of dealerships, the new dealer or existing dealer relocation shall have the burden of proof.[12]

7. The Applicant has failed to meet its burden of proof in this matter [13]

8. The Applicant has not presented any evidence that good cause exists for granting the application to establish a Mercury dealership within the relevant market area. The Applicant has also not presented any evidence that no good cause exists for denying the application to establish a Mercury dealership within the relevant market area.

9. The involuntary dismissal of a timely protest for the failure of the protestant [Complainant] to attend an oral hearing or for otherwise failing to diligently "prosecute" the protest, does not satisfy the statutory requirement that the Commission "examine into the merits of the protest, and enter an order in accordance with the findings."[14]

1. The Applicant's request to establish a Mercury dealership should be denied.
2. The Complainant's protest to the Applicant's request should be sustained.

DISPOSITION

Based upon the above and foregoing findings and conclusions it is ORDERED that the application of MARINE COMPANY. be denied. It is further recommended that the protest of the Complainant 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.

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[1] Green cards were signed for all four (4) notices. The original notices had a scrivener's error on the year (2002 instead of 2004). Notices were mailed to the Applicant at two current addresses. One address is for his business in Michigan and the other in ANYTOWN, Oklahoma.

[2] The letter was received by the Oklahoma Tax Commission on February 20, 2004, and filed with the Secretary-Member of the Oklahoma Tax Commission on February 23, 2004.

[3] Since the letters were not enclosed, the date of mailing to the dealers cannot be determined from the record.

[4] There is no date of receipt reflected on this protest.

[5] The letter of protest is stamped as being received by the Division on March 8, 2004.

[6] A copy of the faxed Withdrawal of Protest was filed with the Office of the Administrative Law Judge on May 27, 2004.

[7] 63 O.S. §§ 4042, 4033, 4037.1 and 4037.2.

[8] 63 O.S. § 4037.1. The relevant market area is the area within a radius of fifteen (15) miles of the site of the proposed new vessel or new motor dealership.

[9] See Note 7.

[10] See Note 7. When such a protest is filed, the Commission shall inform the dealer that a timely protest has been filed, and that the dealer shall not establish or relocate the proposed new vessel or new motor dealership until the Commission has held a hearing, nor thereafter, if the Commission has determined that there is good cause for not permitting such new vessel or new vessel or new motor dealership.

[11] 63 O.S. § 4037.2.

[12] See Note 7.

[13] *OAC 710:1-5-47*. See *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 1988 OK 91, 768 P.2d 359.

[14] Precedential *Commission Order No. 1996-05-30-002*.