

Before the
Administrative Hearing Commission
State of Missouri



OZEC AUTOS, LCC,)	
)	
Petitioner,)	
)	
vs.)	No. 15-0333 RL
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

We dismiss the complaint filed by OZEC Autos, LLC (“OZEC”) because we do not have jurisdiction to hear it.

Procedure

On March 12, 2015, OZEC filed a complaint appealing a decision by the Director of Revenue (“the Director”) revoking OZEC’s dealer license. On March 20, 2015, the Director filed a motion for decision on the pleadings, which we denied by order dated March 23, 2015 because it was filed less than 45 days before the hearing. On March 24, 2015, the Director filed a motion for leave to file the motion out of time. By order dated March 24, 2015, we granted the motion for leave to file out of time and gave OZEC until April 8, 2015 to respond to the motion for decision on the pleadings. OZEC did not respond.

Because the Director's motion contains matters outside the pleadings, we consider it a motion for summary decision. 1 CSR 15-3.436(4)(A).¹ Our Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the Director establishes facts that (a) OZEC does not dispute and (b) entitle the Director to a favorable decision. The following facts are undisputed.

Findings of Fact

1. By letter dated February 6, 2015, the Director notified OZEC that he intended to revoke OZEC's dealer license because OZEC had failed to maintain a bona fide place of business by failing to be open during posted business hours on multiple occasions. The Director set a hearing on February 27, 2015.
2. OZEC appeared at the hearing and was represented by counsel.
3. On March 12, 2015, the Director issued her "Findings of Fact, Conclusions of Law, and Order" revoking OZEC's dealer license.
4. Also on March 12, 2015, OZEC filed a complaint with this Commission.

Conclusions of Law

The Director argues we do not have jurisdiction to hear the case. Section 301.562.2² provides that the Director may file a complaint with us to determine whether there is cause to discipline a licensee. But § 301.562 also provides another set of procedures for imposing discipline:

5. Notwithstanding the foregoing provisions of this section, the following events or acts by the holder of any license issued under sections 301.550 to 301.580 are deemed to present a clear and present danger to the public welfare and shall be considered cause for suspension or revocation of such license under the procedure

¹All references to "CSR" are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

² Statutory references, unless otherwise noted, are to the 2013 Cum. Supp. of the Revised Statutes of Missouri.

set forth in subsection 6 of this section, at the discretion of the director:

(2) The failure to maintain a bona fide established place of business as required by section 301.560[.]

6. (1) Any license issued under sections 301.550 to 301.580 shall be suspended or revoked, following an evidentiary hearing before the director or his or her designated hearing officer, if affidavits or sworn testimony by an authorized agent of the department alleges the occurrence of any of the events or acts described in subsection 5 of this section.

Subsections (2) and (3) of § 301.562.6 set forth the procedures for notice and conduct of the hearing, and further provide that “The written order of the director or his or her hearing officer shall be the final decision of the director and shall be subject to judicial review under the provisions of chapter 536.”

The Director presented evidence that the procedures set forth in § 301.562 were followed in revoking OZEC’s license. We agree that we do not have jurisdiction to hear this case. The statute clearly gives authority to the Director to conduct such a hearing and, following that hearing, to revoke a license. Once the Director does so, her decision is a final decision subject to review by the courts. We are not the judicial reviewing entity referenced in § 301.562.6(3). *See* § 536.100.

OZEC complains that the hearing was conducted unfairly and that the Director’s representatives were racially biased and unprofessional. But we have no power to superintend another agency’s procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm’n*, 700 S.W.2d 445, 450 (Mo. banc 1985). “[A]dministrative agencies—legislative creations—possess only those powers expressly conferred or necessarily implied by statute.” *United Pharmacal Co. of Mo., Inc. v. Mo. Bd. of Pharmacy*, 208 S.W.3d 907, 913 (Mo.

banc 2006) (internal quotation omitted). Thus, our authority to act comes from the statutes alone. The fact that the Director's final decision in this case is subject to judicial review means that we have no authority to review or remake the decision. If we lack authority to hear a complaint, we can take no action other than to exercise our inherent power to dismiss it. *State Bd. of Registration for Healing Arts v. Draper*, 280 S.W.3d 134, 136 (Mo. App., E.D., 2009).

We grant the Director's motion and dismiss the case.

Summary

Because we lack jurisdiction, we dismiss the case and cancel the hearing.

SO ORDERED on April 17, 2015.

\s\ Karen A. Winn

KAREN A. WINN

Commissioner