

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 0587

DOUBLE TREE RV, L.L.C.

VERSUS

ATCHAFALAYA RV, L.L.C. & THE LOUISIANA
RECREATIONAL & USED MOTOR VEHICLE COMMISSION

Judgment Rendered: October 29, 2010.

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 578,115

The Honorable William Morvant, Judge Presiding

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

CARTER, C. J.

In this appeal brought pursuant to the Administrative Procedure Act (APA), Double Tree RV, L.L.C., challenges a judgment of the district court partially modifying and affirming an order of the Louisiana Recreational and Used Motor Vehicle Commission, which ordered Double Tree to repurchase two RVs from Atchafalaya RV, L.L.C., to pay penalties, and to pay court costs.¹

The APA specifies that judicial review shall be confined to the record, as developed in the administrative proceedings. LSA-R.S. 49:964F. The reviewing court may reverse or modify the agency decision if substantial rights of the appellant are prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the agency's statutory authority; (3) made upon unlawful procedure; (4) affected by other error of law; (5) arbitrary, capricious, or an abuse of discretion; or (6) not supported and sustainable by a preponderance of evidence as determined by the reviewing court. LSA-R.S. 49:964G; **In re Ferrara Fire Apparatus, Inc.**, 03-0446 (La. App. 1 Cir. 12/31/03), 868 So.2d 762, 763-764. On legal issues, the reviewing court gives no special weight to the findings of the administrative tribunal, but conducts a *de novo* review of questions of law and renders judgment on the record. **In re Ferrara Fire Apparatus, Inc.**, 868 So.2d at 764.

¹ At the outset we note that this matter was decided by The Recreational Used Motor Vehicle Commission prior to Acts 2009, No. 403, which renamed that Commission "The Used Motor Vehicle Commission" and assigned jurisdiction over new recreational vehicles to The Motor Vehicle Commission. The statutory provisions at issue herein, LSA-R.S. 32:811 et seq., were also repealed by Acts 2009, No. 403. However, we find nothing in Acts 2009, No. 403, which would render an order validly entered by the former Recreational Used Motor Vehicle Commission a nullity. Thus, we proceed with reviewing this matter pursuant to the APA.

The Commission determined that Double Tree (a recreational vehicle manufacturer) violated LSA-R.S. 32:812A(2)(c) by terminating its franchise agreement with Atchafalaya (a former dealer of Double Tree's products) without just cause and without the required ninety day notice. The Commission found that the termination was without just cause because it was based on failure to meet stocking requirements when no such requirements were set forth in the franchise agreement. Further, the termination letter did not give the required notice. These findings are supported by a preponderance of the evidence and will not be disturbed.

Double Tree was ordered to repurchase 2007 and 2008 inventory from Atchafalaya pursuant to LSA-R.S. 32:821, the mandatory repurchase statute. Under LSA-R.S. 32:821, a manufacturer was obliged to repurchase from the dealer "all new and recreational vehicles and travel trailers of the current and immediate prior model year" when the dealer "[ceased] to engage in the business of being a recreational vehicle or travel trailer dealer or [ceased] to sell a particular make of recreational vehicle or travel trailer."² Double Tree contends the Commission's order was erroneous because Atchafalaya did not cease doing business and because it was ordered to repurchase 2007 inventory after 2009 models were being manufactured and sold.

The Commission found that Atchafalaya held three of Double Tree's models, while the parties disputed which models were required to be repurchased and whether Atchafalaya "discontinued its attempts to sell" them in October 2008. However, in January 2009, a customer from a prior year returned and expressed interest in a 2008 Double Tree model. The model was sold after Atchafalaya contacted Double Tree. Considering the

² The statute also sets forth certain notice requirements that are not at issue herein.

unique circumstances presented, we agree with the Commission and the trial court that the 2009 sale did not invalidate the repurchase requirement of the statute.

In finding no error in ordering the repurchase of the 2007 model, the trial court noted that “in May of 2008 the manufacturer began producing and selling 2009 units, but the last order placed by Atchafalaya was March 11, 2008. It was delivered on June 14, 2008, and it was for a 2008 model. They were still ordering and receiving the 2008 models.” Our review leads us to likewise conclude that the order to repurchase the 2007 model is supported by the law and record.

After reviewing the record of the administrative proceedings, we find no basis for modification or reversal under LSA-R.S. 49:964G.³ Accordingly, the judgment of the trial court is affirmed in accordance with URCA Rule 2-16.1.B. Costs of this appeal are assessed to Double Tree RV, L.L.C.

AFFIRMED.

³ The trial court’s modification of the Commission’s order to eliminate fines for failing to repurchase the 2007 model has not been raised and is not before this court.