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OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of)	PCH-2003-9
)	
HARRY MARX CHEVROLET/ CADILLAC,)	HEARINGS OFFICER'S
)	FINDINGS OF FACT,
Petitioner,)	CONCLUSIONS OF LAW,
)	AND DECISION
vs.)	
)	
STATE PROCUREMENT OFFICE, STATE OF HAWAII,)	
)	
Respondent.)	
)	

HEARINGS OFFICER'S FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND DECISION

I. INTRODUCTION

On April 8, 2003, Harry Marx Chevrolet/Cadillac ("Petitioner"), filed a request for an administrative hearing to contest the State Procurement Office, State of Hawaii's ("Respondent"), April 2, 2003 denial of Petitioner's protest dated March 14, 2003, in conjunction with an invitation for bids, IFB-03-086-MO Compact Sport Utility Vehicle for the Department of Hawaiian Home Lands, Island of Molokai ("IFB"). On April 11, 2003, a Notice of Hearing and Pre-Hearing Conference was issued and duly served on the parties.

On April 21, 2003, a pre-hearing conference was held. Patricia Ohara, Esq. appeared for Respondent; Warren Bell and Monte Medeiros appeared on behalf of Petitioner as its authorized representatives. At the pre-hearing conference, the parties agreed and understood that Respondent would be filing a motion for summary judgment by May 16, 2003; that Petitioner's response would be due by May 30, 2003 and that Respondent's reply would be filed by June 4, 2003. The parties were also notified that the motion would come before the Hearings Officer on June 9, 2003.

On May 16, 2003, Respondent moved the Hearings Officer to enter summary judgment in its favor. No response was received from Petitioner.

The motion came before the undersigned Hearings Officer on June 9, 2003. Ms. Ohara, Esq. appeared for Respondent. Petitioner's representatives failed to appear or otherwise communicate with this Office even though the hearing on Respondent's motion was delayed approximately ten minutes to await the appearance of Petitioner's representatives.

Having reviewed and considered the motion, memorandum, and exhibits attached thereto, together with the argument of counsel, the Hearings Officer hereby renders the following findings of fact, conclusions of law and decision.

II. FINDINGS OF FACT

1. Petitioner is not licensed as a motor vehicle dealer in the State of Hawaii. However, Petitioner is a franchised General Motors dealer in California, and licensed in the State of California, California License No. 156-91-57-9.

2. On December 30, 2002, Petitioner requested an administrative review to contest the County of Maui's rejection of a bid it had submitted in response to an invitation for bids issued by the County of Maui. The matter was designated as PCH-2002-19.

3. On January 22, 2003, the respondent in PCH-2002-19 filed a motion for summary judgment seeking the dismissal of Petitioner's request for review.

4. The motion was based in part on the argument that the rejection of Petitioner's bid was proper because Petitioner did not have a Hawaii motor vehicle dealer's license. Petitioner did not dispute the fact that it did not have a Hawaii motor vehicle dealer's license. Instead, Petitioner claimed that (1) its bid should not have been rejected because it is exempt from complying with Hawaii Revised Statutes ("HRS") Chapter 437; and (2) because the licensing requirement is a violation of Petitioner's constitutional rights under Article I, Section 8 of the United States Constitution.

5. On March 17, 2003, the Hearings Officer issued her Findings of Fact, Conclusions of Law, and Decision in PCH-2002-19.

6. The Hearings Officer declined to address the latter issue after determining that "she does not have the authority to rule on the constitutionality of a statute."

7. With respect to the exemption issue, the Hearings Officer found that:

Petitioner has not identified any provision of HRS Chapter 437, or any other law which provides that an out of state, licensed (in California) franchised dealer who submits bids on IFB's issued

by Respondent (or any other state or county agency) for the purchase of motor vehicles is exempt from the requirement that it be a licensed motor vehicle dealer in the State of Hawaii. In addition, Respondent does not have the authority to grant exemptions to the licensing requirements contained in HRS Chapter 437. Accordingly, the Hearings Officer finds that Petitioner must be licensed as a motor vehicle dealer in the State of Hawaii in order for Respondent to purchase vehicles from it, and therefore, concludes that Respondent's rejection of Petitioner's bid was not improper.

8. On April 8, 2003, Petitioner filed an administrative hearing request in the instant action. The request was based on Respondent's denial of Petitioner's protest in connection with the rejection of its bid submitted in response to the IFB.

9. Petitioner's request sought a review of the stated reasons for the rejection: "They did not have the authority to grant exemptions to the licensing requirements contained in Chapter 437, and Chapter 437 does not exempt franchise dealers (even those who are licensed in other jurisdictions) from licensure". "Regarding our statement concerning the Constitutionality of Chapter 437, the State Procurement Office stated "they are not empowered to determine the Constitutionality of a law."

III. CONCLUSIONS OF LAW

If any of the following conclusions of law shall be deemed to be findings of fact, the Hearings Officer intends that every such conclusion of law shall be construed as a finding of fact.

In moving the Hearings Officer for summary judgment, Respondent contends that the "underlying issues of the current appeal against the State have already been determined by this body in that prior action brought by Petitioner against the County of Maui, Department of Finance (PCH-2002-19) wherein Respondent's Motion for Summary Judgment was granted." As such, the instant motion is based on the doctrine of collateral estoppel or issue preclusion.

Issue preclusion is a doctrine that limits a litigant to one opportunity to litigate aspects of the case to prevent inconsistent results and multiplicity of suits and to promote finality and judicial economy. Issue preclusion applies to a subsequent suit on a different cause of action and prevents the parties or their privies who lost in the earlier suit from relitigating any issue that was actually litigated and finally decided in the earlier action. The party asserting issue preclusion must establish that (1) the issue decided in the prior adjudication is identical to the one presented in the action in question; (2) there is a final judgment on the merits; (3) the issue decided in the prior adjudication was essential to the final judgment; and (4) the party against whom issue preclusion is

being asserted was a party or in privity with a party to the prior adjudication. *See generally, Steve M. Rogers, et al., v. Maneck B. Minoo, et al., (2003).*

In this case, all four elements are present. There is no dispute that the issues decided in the prior action are identical to the issues presented here, and that the party against whom collateral estoppel is being asserted, namely Petitioner, was also a party in the prior action. Moreover, it is also beyond dispute that a final judgment on the merits was issued in the prior action and that the issues decided there were essential to the final judgment. Based on these considerations, the Hearings Officer concludes that Petitioner is now collaterally estopped from pursuing the instant action.

IV. DECISION

Based upon the foregoing findings and conclusions, the Hearings Officer orders that this matter be and is hereby dismissed.

JUN 23 2003

Dated at Honolulu, Hawaii: _____.



CRAIG H. UYEHARA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs