

STATE OF MICHIGAN
COURT OF CLAIMS

SMOKERS ONLY, INC. and ALI SHOUMAN,

Appellants,

v

MICHIGAN DEPARTMENT OF TREASURY,

Appellee.

OPINION AND ORDER

Case No. 13-000073-MT

Hon. Michael J. Talbot

Smokers Only, Inc. and Ali Shouman (collectively “Smokers Only”) appeal as of right the Michigan Department of Treasury’s (“the Department”) April 19, 2013 decision and order of determination upholding the Department’s revocation Smokers Only’s tobacco licenses.¹ This Court orders that the decision and order of the Department is affirmed.²

Smokers Only erroneously argues that there were inadequate grounds to revoke its tobacco licenses. When, such as here, “the agency’s governing statute does not require the agency to conduct a contested case hearing, the circuit court may not review the evidentiary support underlying the agency’s determination.”³ Rather,

¹ The licenses revoked were Smokers Only’s unclassified acquirer of OTP license, secondary wholesaler of OTP license, and secondary wholesaler of cigarettes (“CIG”) license.

² This Court notes that Smokers Only failed to comply with the court rules when it used its entire appellate brief to argue its position. By failing to provide the Court with the facts on which it was relying, Smokers Only’s brief failed to assist the Court in deciding the issues on appeal. MCR 7.212(C)(6).

³ *Natural Resources Defense Council v Dep’t of Environmental Quality*, 300 Mich App 79, 87; 832 NW2d 288 (2013); MCL 205.21; MCL 205.425.

[j]udicial review is “limited in scope to a determination whether the action of the agency was authorized by law.” The agency’s action was not authorized by law if it violated a statute or constitution, exceeded the agency’s statutory authority or jurisdiction, materially prejudiced a party as the result of unlawful procedures, or was arbitrary and capricious.⁴

Questions of law, “including whether an agency’s action complied with a statute[,]” are reviewed de novo.⁵

The Tobacco Products Tax Act (“TPTA”)⁶ provides that “[t]he department may suspend, revoke, or refuse to issue or renew a license issued under this act for failure to comply with this act or for any other good cause.”⁷

A secondary wholesaler or unclassified acquirer, such as Smokers Only, is required to “keep a complete and accurate record of each tobacco product manufactured, purchased, or otherwise acquired.”⁸ “[T]he records shall include a written statement containing the name and address of both the seller and the purchaser, the date of delivery, the quantity, the trade name or brand, and the price paid for each tobacco product purchased.”⁹ MCL 205.427 states in relevant part:

(1) Beginning May 1, 1994, a tax is levied on the sale of tobacco products sold in this state as follows:

* * *

⁴ *Natural Resources Defense Council*, 300 Mich App at 87-88.

⁵ *Id.* at 88.

⁶ MCL 205.421, *et seq.*

⁷ MCL 205.425(1).

⁸ MCL 205.426(1).

⁹ *Id.*

(g) Beginning July 1, 2004, for cigars, noncigarette smoking tobacco, and smokeless tobacco, 32% of the wholesale price.^[10] However, beginning November 1, 2012 and through October 31, 2016, the amount of tax levied under this subdivision on cigars shall not exceed 50 cents per individual cigar.

(2) On or before the twentieth day of each calendar month, every licensee under section 3 other than a retailer, unclassified acquirer licensed as a manufacturer, or vending machine operator shall file a return with the department stating the wholesale price of each tobacco product other than cigarettes purchased, the quantity of cigarettes purchased, the wholesale price charged for all tobacco products other than cigarettes sold, the number of individual packages of cigarettes and the number of cigarettes in those individual packages, and the number and denominations of stamps affixed to individual packages of cigarettes sold by the licensee for each place of business in the preceding calendar month....The return shall be signed under penalty of perjury. The return shall be on a form prescribed by the department and shall contain or be accompanied by any further information the department requires....

Here, based on the evidence presented, the Department found that Smokers Only violated the TPTA when it failed to report all of its tobacco purchases “though [it] is required to report all purchases of untaxed tobacco products it imports or acquires including cigars from sources outside of Michigan that are not licensed under the TPTA.” The Department found an additional violation of the TPTA based on evidence that Smokers Only underreported “many of its tobacco purchases.” Smokers Only argues that because the amount of tobacco products that it failed to report or that it underreported was minimal, the Department’s determination to revoke its licenses was arbitrary and capricious. A ruling of an administrative agency “is arbitrary and capricious when it lacks an adequate determining principle, when it reflects an absence of consideration or adjustment with reference to principles, circumstances, or significance, or when

¹⁰ “‘Wholesale price’ means the actual price paid for a tobacco product, including any tax, by a wholesaler or unclassified acquirer to a manufacturer, excluding any discounts or reductions.” MCL 205.422(bb).

it is freakish or whimsical.”¹¹ The Department’s conclusion that the TPTA was not complied with was based on a clear application of the evidence in the instant case to the law. Additionally, Smokers Only has failed to demonstrate that there is a statutory exception for alleged “de minimis” reporting errors. Thus, Smokers Only has not persuaded this Court that the Department’s determination was arbitrary or capricious. Additionally, while Smokers Only further asserts that its failure to report and its underreporting of tobacco products was unintentional, it has not established why such facts are relevant to the determination of its compliance with the TPTA. Accordingly, these arguments must fail.

The TPTA also requires that Smokers Only be licensed and that such license shall be issued only after “proper application” signed under penalty of perjury, and “payment of the applicable fee.”¹² The Department found that Smokers Only’s 2012 license application was improper because it failed to list all of the requisite businesses outside of Michigan from which it would be purchasing untaxed tobacco; an additional violation of the TPTA. Smokers Only contends that for a period of time it was unaware that such a list was required. It is well-settled, however, that “ignorance of the law is not a defense.”¹³ Because the record supports that Smokers Only failed to comply with the TPTA, the Department’s decision to uphold the revocation of Smokers Only’s tobacco licenses was authorized by law, and reversal by this Court is not warranted.¹⁴

¹¹ *Wescott v Civil Serv Comm*, 298 Mich App 158, 162; 825 NW2d 674 (2012).

¹² MCL 205.423.

¹³ *Young v Young*, 211 Mich App 446, 448; 536 NW2d 254 (1995).

¹⁴ MCL 205.423; MCL 205.426(1); MCL 205.427; *Natural Resources Defense Council*, 300 Mich App at 87-88.

Smokers Only further asserts without merit that revocation of its licenses violated its substantive and procedural due process rights. First, Smokers Only has not explained how its substantive due process rights were violated. This Court is not required “to search the record for factual support” for its claim.¹⁵ Therefore, this argument must fail. Second, “procedural due process requires that a party be provided notice of the nature of the proceedings and an opportunity to be heard by an impartial decision maker at a meaningful time and in a meaningful manner.”¹⁶ Here, review of the record reveals no violation of Smokers Only’s procedural due process rights.¹⁷ Thus, Smokers Only’s contention lacks merit.

Affirmed.

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/s/ Michael J. Talbot

¹⁵ MCR 7.212(C)(7); *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 388; 689 NW2d 145 (2004).

¹⁶ *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 213-214; 761 NW2d 293 (2008).

¹⁷ MCL 205.21; MCL 205.425.