

STATE OF MICHIGAN
COURT OF CLAIMS

SMOKERS ONLY, INC.,

Appellant,

v

MICHIGAN DEPARTMENT OF TREASURY,

Appellee.

OPINION AND ORDER

Case No. 13-000186-MT

Hon. Michael J. Talbot

Smokers Only, Inc. appeals as of right the Michigan Department of Treasury's ("the Department") November 22, 2013 decision and order denying Smokers Only's application for tobacco licenses¹ for the 2013-2014 year.² This Court orders that the decision and order of the Department is affirmed.

Smokers Only argues that there were inadequate grounds for the Department to refuse to renew its tobacco licenses for the 2013-2014 year. 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 Smokers Only applied for were the unclassified acquirer of OTP license, secondary wholesaler of OTP license, and secondary wholesaler of cigarettes ("CIG") license.

² This case relates to the appeal in case number 13-000073-MT, the opinion and order for which was issued on March 6, 2014.

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 in pertinent part 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 In its opinion and order for the related appeal in Court of Claims case number 13-000073-MT issued on March 6, 2014, this Court found that the Department was authorized by law to revoke Smokers Only’s tobacco licenses. Smokers Only is making the same arguments and relying on the same facts to support its contention that its tobacco licenses should have been renewed. Thus, the law that applied to the determination of whether the tobacco licenses were appropriately revoked also applies to the issue of whether the Department was authorized by law to refuse to renew Smokers Only’s tobacco licenses. Accordingly, this Court finds that based on its prior analysis the Department’s refusal to renew Smokers Only’s tobacco licenses for the 2013-2014 year was also authorized by law and relief is not warranted.

Affirmed.

APR - 1 2014

/s/ Michael J. Talbot

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) (Emphasis added).