

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PRESIDENTIAL LEASING, INC.,)
d/b/a PRESIDENTIAL AUTO LEASING)
AND SALES,)
)
Petitioner,)
)
vs.) Case No. 11-0061
)
GLOBAL VEHICLES, U.S.A., INC.,) *AMENDED AS TO TITLE
AND MAHINDRA AND MAHINDRA) OF ORDER
LIMITED,)
)
Respondents.)
)

*AMENDED RECOMMENDED ORDER OF DISMISSAL AS TO GLOBAL VEHICLES,
U.S.A., INC., AND MAHINDRA & MAHINDRA, LTD

Respondent Mahindra & Mahindra, Ltd. (Mahindra) is a motor vehicle manufacturer that entered into a distributor agreement with Respondent Global Vehicles U.S.A., Inc. (Global) for the distribution of certain Mahindra motor vehicles through a dealer network to be established in Florida and elsewhere. The distributor agreement contemplated that Global would enter into franchise agreements with motor vehicle dealers. However, the distributor agreement is conditioned on the EPA's issuance of a certification permitting the importation of Mahindra vehicles into the United States. Because this condition was not timely satisfied, the distributor agreement terminated prior to the importation of any Mahindra vehicles under the distributor

agreement and any franchise agreements. The termination of the distributor agreement reportedly was confirmed by a recent arbitration decision.

Petitioner Presidential Leasing, Inc., entered into a franchise agreement with Global to sell Mahindra vehicles in the primary market area described in its franchise agreement. Petitioner complains in general of the loss of an opportunity to sell Mahindra vehicles and the stated intent of Mahindra to proceed with the establishment of a United States dealer independent of any such network that Global may have developed and, thus, likely independent of Petitioner.

On December 23, 2010, Mahindra served by mail on Petitioner a Motion to Dismiss Petitioner's Amended Petition, which was filed with DOAH on January 19, 2011. The Department of Highway Safety and Motor Vehicles (Department) transmitted the file to DOAH on December 20, 2010. In the file is a Petition for Administrative Hearing dated December 13, 2010. (Even though the petition may be an amended petition, this Order will refer to it as it is styled, "Petition.")

The Motion to Dismiss raises personal and subject-matter jurisdiction as grounds for the dismissal of Mahindra from the case. Global is represented, but has filed nothing on this motion.

On February 18, 2011, Mahindra filed a motion to abate, pending the resolution of the dispute through "overseas arbitration." Petitioner joined in the motion, but, always a model of reticence in this case, Global took no position on the request. Through successive orders, the Administrative Law Judge abated the case for nearly one year. On receiving a third motion to abate, though, the Administrative Law Judge issued instead, on February 7, 2012, an Order for [Petitioner] To Show Cause Why the Case Should Not Be Dismissed for Lack of Subject-Matter Jurisdiction. On February 20, 2012, Petitioner filed its response. On March 20, 2012, Mahindra filed notice of the arbitration determination that the distributor agreement had terminated on June 10, 2010. On March 23, 2012, Petitioner filed a response to this notice, stating that, due to the long abeyance, it has not filed any responses to the Motion to Dismiss and arguing that the arbitration determination is not binding in this case.

Petitioner had adequate opportunity to respond to the Motion to Dismiss when it was filed. Fla. Admin. Code R 28-106.204(1). The time ran for filing a response on January 4, 2011. As to subject-matter jurisdiction, at least, Petitioner had another clear opportunity to state its arguments in response to the Order to Show Cause.

In ruling on the Motion to Dismiss, all facts will be considered most favorably to Petitioner. At this stage, it is impossible to resolve the claimed distinction between Mahindra and the Texas corporation not registered to do business in Florida. Mahindra's argument is that, in serving the Texas corporation, which is a Mahindra subsidiary, Petitioner did not acquire personal jurisdiction over Mahindra. Because Mahindra is not licensed under sections 320.60-320.70, Florida Statutes, service is not possible under section 320.615. The obvious question is whether Mahindra has sufficient contacts with Florida to justify constructive service on the Secretary of State, under section 48.181, by engaging in business in Florida. Both the relationship between Mahindra and its Texas corporation and the contacts of Mahindra with Florida are fact questions that would require a limited evidentiary hearing, if this case could not be resolved on the ground of subject-matter jurisdiction.

Engaging in business in Florida also plays a role in determining subject-matter jurisdiction. Mahindra is not an applicant or holder of a licensee, so jurisdiction is unavailable through these means. But a licensee under section 320.60(8) includes any person who is required to be licensed, and this is where engaging in business in Florida arises again. Section 320.61(1) provides:

No manufacturer, factory branch, distributor, or importer (all sometimes referred to hereinafter as "licensee") shall engage in business in this state without a license therefor as provided in ss. 320.60-320.70. No motor vehicle, foreign or domestic, may be sold, leased, or offered for sale or lease in this state unless the manufacturer, importer, or distributor of such motor vehicle, which issues an agreement to a motor vehicle dealer in this state, is licensed under ss. 320.60-320.70.

The question is whether this provision establishes two alternative means for establishing subject-matter jurisdiction or one, in which case, the second sentence explains the meaning of the first sentence.

Mahindra is a "manufacturer." Arguably, it engaged in business in Florida by conducting negotiations with Global to provide a dealer network in Florida. But the first sentence is potentially overbroad, if not limited by the second sentence. Reading the first sentence in isolation, Mahindra, a motor vehicle manufacturer whose motor vehicles are not sold in Florida, could be required to obtain a license, if it sold tires in Florida, or if it operated a pork processing plant in Florida.

Although it is odd that the second sentence drops "factory branch" from the first sentence, the second sentence clarifies that the requirement to obtain a license is triggered by the sale or leasing of motor vehicles in Florida--a natural

limitation on the licensing requirement contained in statutes addressing the rights and responsibilities of motor vehicle dealers and manufacturers. The business that cannot be conducted in Florida without a license is the sale or leasing-- or offering for sale or lease--of motor vehicles.

For this reason, there is no subject-matter jurisdiction over Mahindra. For the same reason, there is no subject-matter jurisdiction over Global. Given the nature of the issue-- subject-matter jurisdiction--a motion from Global is not required, and Petitioner received notice of the possible dismissal of the case, as to both parties, in the Order To Show Cause.

It is

RECOMMENDED that the Department enter a final order dismissing the Petition.

DONE AND ENTERED this 1st day of May, 2012, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
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this 1st day of May, 2012.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order of Dismissal. Any exceptions to this Recommended Order of Dismissal should be filed with the agency that will issue the Final Order in this case.