

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Prestige
Administration, Inc.

**RECOMMENDED ORDER ON
CROSS-MOTIONS FOR
SUMMARY DISPOSITION**

This matter is currently pending before Administrative Law Judge James LaFave. On May 29, 2015, Prestige Administration, Inc. served and filed a Motion for Summary Disposition. The Department of Commerce filed a Memorandum in Opposition to the Motion for Summary Disposition on June 11, 2015. A hearing on the motion was held on June 19, 2015. At the motion hearing the parties agreed this matter should be decided on cross motions for summary disposition and the Department so moved. As a result, additional briefing was necessary. Prestige Administration, Inc. filed a Reply Memorandum in Support of Motion for Summary Disposition on June 26, 2015. The Department of Commerce filed a Supplemental Memorandum in Opposition to Respondent's Motion for Summary Disposition on July 8, 2015. The record on the motions closed that day.

Sarah L. Krans, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Zachary J. Crain, Nilan, Johnson, Lewis, P.A., appeared on behalf of Prestige Administration, Inc. (Prestige or Respondent).

Based upon all of the files and records herein, and for the reasons set forth in the following Memorandum, the Administrative Law Judge makes the following:

RECOMMENDED ORDER

1. Prestige's Motion for Summary Disposition is **DENIED**;
2. The Department's Motion for Summary Disposition is **GRANTED**; and
3. The Department has the legal authority to impose civil penalties on Prestige pursuant to Minn. Stat. § 45.027, subd. 6 (2014).

Dated: August 7, 2015

s/James E. LaFave
JAMES E. LAFAVE
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2014), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Heidi Retterath, Suite 500, 85 Seventh Place East, St. Paul, MN 55101, (651) 539-1445, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2014). In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1 (2014), the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

I. Issue

Minnesota law regulates service contracts and requires that those who provide service contracts register with the Department.¹ “Service contracts” are defined under Minnesota law to include “a contract or agreement for a separately stated consideration for a specific duration to perform the repair ... of property.”² Prestige sells AutoLifeRx, a product which provides a five year or 100,000 mile limited warranty for the repair of vehicles.³ Is AutoLifeRx a “service contract” under Minnesota law?

II. Facts

Prestige is an Arizona corporation that manufactures a coolant additive product sold under the name “AutoLifeRx.”⁴ Prestige is the owner of the federal trademark

¹ Minn. Stat. ch. 59B (2014).

² Minn. Stat § 59B.02, subd. 11.

³ See Affidavit of Robert J. Konzen, Jr. (Konzen, Jr. Aff.), Ex. B.

⁴ Konzen, Jr. Aff. at ¶ 3.

“AutoLife®.”⁵ Prestige is not registered in any capacity with the Minnesota Secretary of State.⁶

Prestige maintains an informational website for AutoLifeRx.⁷ The top of the first page on the website states “AutoLifeRx,” and below that is a picture of a car and the phrase “5 years/100,000 miles.”⁸ Prestige’s website states that it administers “extended auto warranties” and that “AutoLifeRx 5 year or 100,000 mile extended warranty has been our flagship product.”⁹ Prestige markets AutoLifeRx with a brochure that states, “AutoLifeRx warranty covers the parts and labor of repairing your vehicle’s engine, transmission, and water pump for five years or 100,000 miles, whichever comes first.”¹⁰

The AutoLifeRx brochure goes on to state:

Why AutoLifeRx?

AutoLifeRx protects your vehicle for an additional five years or 100,000 miles.

You can drive with confidence knowing your vehicle is protected from unnecessary breakdowns and the high costs of repairs.

The AutoLifeRx warranty.

AutoLifeRx warranty covers parts and labor of repairing your vehicle’s engine, transmission and water pump for five years or 100,000 miles, whichever comes first. The AutoLifeRx warranty is backed by one of the strongest-performing insurance companies in the industry....¹¹

Prestige also offers its customers the option of purchasing AutoLifeRx Plus. According to Prestige’s marketing brochure, AutoLifeRx Plus “offers limited coverage for parts labor and towing toward repairing your vehicle’s engine, transmission, water pump, starter, alternator, and air conditioning (compressor, pulley, and clutch) for five years or 100,000 miles, whichever occurs first.”¹²

Prestige sells AutoLifeRx to new and used car dealerships, not to individual consumers.¹³ Only dealerships that are authorized by Prestige may sell the AutoLifeRx product to Minnesota consumers.¹⁴ Prestige does not set or control the price that

⁵ *Id.* at ¶ 4.

⁶ Affidavit of Steven M. Klebba (Klebba Aff.) at ¶ 3.

⁷ Konzen, Jr. Aff. at ¶ 7; See www.autoliferx.com.

⁸ See www.autoliferx.com.

⁹ *Id.* ¶ 5; Ex. 3.

¹⁰ *Id.* Ex. 4.

¹¹ Klebba Aff. at ¶ 6, Ex. 4.

¹² *Id.*

¹³ Konzen, Jr. Aff. at ¶¶ 5, 6.

¹⁴ *Id.* at ¶ 8.

Minnesota auto dealers charge consumers for AutoLifeRx.¹⁵ In Minnesota, consumers have paid between \$1,500 and \$2,995 for AutoLifeRx.¹⁶

In 2012, the Washington State Office of the Insurance Commissioner (Washington Insurance Commissioner) determined that, in that state, Prestige's contracts were service contracts or product guarantees and that Prestige violated various state codes including a requirement for service contract provider registration.¹⁷ The Washington Insurance Commissioner ordered Prestige to cease and desist from soliciting or engaging in the unauthorized and unregistered sale of insurance, service contracts, or protection product guarantees to Washington residents.¹⁸

In 2012, the state of Washington's definition of "service contract" and "warranty" were substantially the same as the definitions of these terms in Minnesota law.¹⁹ Prestige used the same contract forms in the state of Washington as it did in Minnesota.²⁰

On August 3, 2010, the Commissioner of the California Department of Insurance (California Insurance Commissioner) ordered Prestige and its principals to cease and desist from employing, soliciting, or enabling others to sell or issue vehicle service contracts in California.²¹ The California Insurance Commissioner determined that Prestige's contracts met California's definition of a vehicle service contract; that the "warranties" were "contracts or agreements for separately stated consideration and for a specific duration to repair or replace motor vehicles"; and that Prestige was acting as a vehicle service contract provider without a license.²² California's definition of "vehicle service contract" is similar to Minnesota's definition of "service contract."²³

On January 6, 2015, the Department issued a Cease and Desist Order and Notice and Order for Prehearing Conference to Prestige.²⁴

III. Analysis

The Department maintains that Prestige's AutoLifeRx contracts are "service contracts" and that Prestige is a service contract provider under the terms of Minnesota Statutes chapter 59B. Prestige counters that AutoLifeRx is not a service contract under Minnesota law but rather a product with a "warranty" and therefore exempt from the provision of chapter 59B.

¹⁵ *Id.* at ¶ 11.

¹⁶ Klebba Aff. at ¶ 2, Ex. 1.

¹⁷ *Id.* at ¶ 8; Ex. 6.

¹⁸ *Id.*

¹⁹ Compare Wash. Rev. Code § 48.110.020 (17)(a), (21) (2012) with Minn. Stat. § 59B.03, subd. 11 (2012).

²⁰ Klebba Aff. at ¶ 8.

²¹ *Id.* at ¶ 9, Ex. 7.

²² *Id.*

²³ Compare Cal. Ins. Code § 12800 (c)(1) (2010) with Minn. Stat. § 59B.03, subd. 11.

²⁴ Klebba Aff. at ¶ 12; Ex. 10.

a. Summary Disposition Standard

Summary disposition is the administrative law equivalent of summary judgment. The granting of a motion for summary disposition is appropriate when there is no genuine dispute as to the material facts involved in a contested case and the law as applied to those undisputed facts clearly requires a ruling in favor of one of the parties.²⁵ The Office of Administrative Hearings has generally followed the summary judgment standards developed in the district courts in considering motions for summary disposition of contested case matters.²⁶

Ultimately, summary disposition cannot be used as a substitute for a hearing or trial on the facts of a case. Thus, summary disposition is only proper when no fact issue needs to be resolved.

b. Legal Analysis

The parties agree that there are no genuine issues of material fact and that this case turns on the interpretation of the Minnesota statutes governing the definition of “service contracts” and “warranties.”²⁷ Courts have defined the required analysis for statutory interpretation as follows: “The first step in statutory interpretation is to ‘determine whether the statute’s language, on its face, is ambiguous.’ If a statute is unambiguous, then we must apply the statute’s plain meaning.’ If a statute is unambiguous, then we apply the statute’s plain meaning.”²⁸ If, however, a statute has more than one reasonable interpretation, then it is ambiguous and the canons of construction determine its meaning.²⁹ “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.”³⁰

c. “Service Contracts”

Minnesota Statutes chapter 59B provides the legal framework within which service contracts may be sold in the state.³¹ “Service contracts” are defined as:

a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship,

²⁵ Minn. R. Civ. P. 56.03; Minn. R. 1400.5500(K); see *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1988).

²⁶ See Minn. R. 1400.6600 (2015).

²⁷ See Memorandum of Law in Support of Respondent’s Motion for Summary Disposition at 6 (May 29, 2015); Memorandum of Law in Opposition to Respondent’s Motion for Summary Disposition at 11-12 (June 10, 2015).

²⁸ *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010) (quoting *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

²⁹ See *Billion v. Comm’r of Revenue*, 827 N.W.2d 773, 777-778 (Minn. 2013).

³⁰ Minn. Stat. § 645.16 (2014).

³¹ Minn. Stat. § 59B.01(a).

or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including without limitation, towing, rental, emergency road service, and road hazard protection. Service contracts may provide for the repair, replacement, or maintenance of property for damages resulting from power surges and accidental damage from handling.³²

The Department asserts that Prestige's AutoLifeRx contracts are service contracts under Minnesota law. It is undisputed that the contracts are for a specific duration: five years or 100,000 miles, whichever occurs first. The contracts are for separately stated consideration because the "consideration" paid is separate from the property the contract agrees to repair, replace, or maintain. Finally paragraph two of the AutoLifeRx contract states that the "[m]anufacturer's obligation is limited to repairing or replacing **defective** parts...."³³ The Department goes on to note that the AutoLifeRx Plus contract includes roadside assistance and towing, which was contemplated by the definition of "service contract" in the Minnesota statute.

Prestige argues that AutoLifeRx does not meet the definition of a "service contract" for two reasons. First, it is not purchased for a separately stated consideration. Second, that AutoLifeRx does not cover repair for the operational or structural failure due to a defect in material, workmanship, or normal wear and tear. Neither argument withstands scrutiny.

Prestige maintains that AutoLifeRx is a product that comes with a warranty and that the warranty cannot be separated from the sale of the product. Because the warranty cannot be separated from the product, the warranty is not an agreement for separately stated consideration. Therefore, Prestige argues that AutoLifeRx is not a service contract and, because of the warranty, it falls outside the scope of chapter 59B.

In the AutoLifeRx contracts, Prestige promises to warrant certain components of a vehicle, including the engine, water pump, and transmission. Notably, in its contracts Prestige does not promise the indemnification or repair of the additive, but rather parts of the vehicle. Because the AutoLifeRx contracts are sold separately from the property they agree to repair or replace, the agreement is for a separately stated consideration within the meaning of Minn. Stat. § 59B.02, subd. 11.

Second, Prestige argues that the AutoLifeRx contracts do not cover repair for the operational or structural failure due to a defect in material, workmanship, or normal wear and tear and hence, do not meet the definition of "service contract." Again for the purpose of removing AutoLifeRx from definition of a service contract.

Contrary to Prestige's claims, not all failures due to defects in materials, workmanship, or normal wear and tear are excluded by the AutoLifeRx contracts. The contracts specifically include the repair or replacement of defective parts and mechanical failures. Paragraph 2 of the contract states, "[I]n case of a failure of the

³² Minn. Stat. § 59B.02, subd. 11.

³³ Konzen, Jr. Aff., Ex. B (emphasis added).

covered components of the registered vehicle, Manufacturer's obligation is limited to repairing or replacing defective parts with like, kind, and quality including the replacement of all lost fluids including the AutoLifeRx™ additive."³⁴ Thus, the facts demonstrate that AutoLifeRx contracts do cover repair for operational or structural failure due to a defect in material, workmanship, or normal wear and tear as required under the definition of a "service contract" in Minn. Stat. § 59B.02, subd. 11.

Prestige's AutoLifeRx contracts constitute an agreement for separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property. They meet the definition of "service contract" under Minn. Stat. § 59B.02, subd. 11.

d. Warranties

Warranties are exempt from the provisions of chapter 59B.³⁵ Minnesota law defines "warranty" as follows:

"Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration, that is not negotiated or separated from the sale of the product, and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor or other remedial measures, such as repair or replacement of the property or repetition of services.³⁶

Prestige argues that its contracts are warranties and therefore are exempt from the provisions of chapter 59B. It points out that its product comes with a warranty that is not, and cannot be, negotiated or separated from the sale of the AutoLifeRx product.

As previously discussed, the AutoLifeRx contract does not warrant the additive that is added to the vehicle but rather warrants components of the vehicle itself. In that context, the consideration paid for the warranty provided by the AutoLifeRx contract is separate from the product being protected: namely the vehicle.

Because the consideration paid for AutoLifeRx contracts is separate from the sale of the vehicle it is protecting, the AutoLifeRx contracts are not warranties within the meaning of Minn. Stat. § 59B.13. Therefore, they are not exempt from the provisions of chapter 59B.

³⁴ Klebba Aff., Ex. 1.

³⁵ Minn. Stat. § 59B.01(b)(1).

³⁶ Minn. Stat. § 59B.02, subd. 13.

IV. Conclusion

The AutoLifeRx contracts are “service contracts” under the terms of Minnesota law. The contracts do not fall under the “warranty” exemption of Minn. Stat. § 59B.01(b)(1). Prestige’s Motion for Summary Disposition is therefore denied and the Department’s Motion for Summary Disposition is granted.

J. E. L.