

ARKANSAS TOBACCO CONTROL



BOARD MEETING MINUTES OCTOBER 6, 2016

The Arkansas Tobacco Control Board met on Thursday, October 6, 2016 for its monthly meeting in the Main Street Mall Building, located at 101 E. Capitol Avenue, Little Rock, Arkansas, beginning at 10:00 a.m. in Suite 119. There were 8 Board members present. Those attending were Chairman Kevin Case, Mr. Sam Stathakis Jr, Dr. Shabbir Dharamsey, Ms. Carol Dyer, Mr. Steve Lightle, Mr. Jay Hickey, Dr. Brad Mayfield and new board member Dr. Patricia Knott.

Chairman Kevin Case began the meeting with a "Welcome" to those attending. He then introduced Greg Kirkpatrick serving as the Hearing Officer and Mrs. Heather Pierce serving as Court Reporter. Mr. Case then ask for Dr. J. J. Lacey to come forward. He stated that Dr. Lacey had been a faithful board member for 5 years. He presented Dr. Lacey with a plaque commemorating his time on the board. Dr. Lacey then gave a brief to the board and staff and thanked them for assisting him during his time in service. Chairman Case then addressed the board to introduce the newest board member Dr. Patricia Knott. She said a few brief words to the board and staff thanking them for making her transition thus far a good one. Chairman Case then preceded with the meeting.

Mr. Case asked for a motion to approve the board meeting minutes from September 1, 2016.

A motion was made to approve the September minutes and was passed with 7 yes votes, due to board member Dr. Dharamsey running late.

The default list dated October 6, 2016 was presented and read aloud by Attorney Roland Darrow.

A motion was made to approve the default list and was passed with 8 yes votes.

The Hearing Officer then opened the Disciplinary Hearings and asked Attorney Roland Darrow, to present the following.

CONSENT ORDERS

**IN THE MATTER OF
JOSEPH A. COOK, and
JB SPIRITS, INC. DBA WESTSIDE WINE & SPIRITS, Little Rock, Arkansas
PERMIT NO. 05899-03**

CASE NO. 2016-143

On March 24, 2016, Respondents' clerk sold a tobacco product to a minor for a third time within forty-eight months, in violation of A.C.A. § 5-27-227(a)(1).

The Respondents shall be fined \$500.00 as a civil penalty, a three (3) day retail permit suspension is imposed and all retail employees of JB Spirits, Inc. Little Rock, Arkansas Westside Wine & Spirits location must attend an ATC Merchant Education Training within six (6) months of the date of this Order. One (1) day of the suspension will be held in abeyance pending no further violations of A.C.A. § 5-27-227 during the eighteen (18) months following the date of this order. Should a violation occur, the one (1) day suspension shall be immediately imposed upon a finding of guilt for the subsequent violation.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to find the Respondent guilty and levy the suggested penalty. The motion was seconded and passed with 8 yes votes.

**IN THE MATTER OF
MOHAMMAD ARIF, and
NSJ OIL CO. INC. DBA NEWPORT MART
NEWPORT, ARKANSAS
PERMIT NO. 01046-02**

CASE NO. 2016-324

On August 1, 2016, Respondents' clerk sold a tobacco product to a minor for a second time within forty-eight months, in violation of A.C.A. § 5-27-227(a)(1).

The Respondents shall be fined \$250.00 as a civil penalty, and all employees of NSH Oil Co., dba Newport Mart of Newport, Arkansas must attend an ATC Merchant Education Training within six (6) months of the date of this Order.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 8 yes votes.

**IN RE: MARY A. GRAHAM-HARRISON and
JACK'S PACKAGE STORE
MOUNTAIN HOME, ARKANSAS
PERMIT NO. 02915-02**

NO. 2016-281

On June 28, 2016, a store inspection was conducted on Respondents' business premises and during the course of the inspection and subsequent investigation, it was discovered that Respondents possessed tobacco products for which the Arkansas tobacco excise tax had not been paid. Respondents had purchased these untaxed tobacco products from an unlicensed dealer.

The Respondents are fined \$2,069.00 as a civil penalty for the violation of A.C.A. § 26-57-245, Respondents' retail permit is suspended for a period of 10 days and the confiscated tobacco products are ordered to be destroyed; Respondents are fined \$500.00 as a civil penalty and Respondents' retail permit is suspended for 10 days for the violation of A.C.A. § 26-57-228. Respondents' total fine amount is \$2,569.00 and Respondents' suspensions shall run concurrently.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 8 yes votes.

**IN THE MATTER OF
SREELAKSHMI BANDRAPALLI, and
V INVESTMENTS OF ARK INC. DBA V SUPERSTOP
MORRILTON, ARKANSAS
PERMIT NO. 03562-03**

CASE NO. 2016-342

On August 10, 2016, Respondents' clerk sold a tobacco product to a minor for a second time within forty-eight months, in violation of A.C.A. § 5-27-227(a)(1).

The Respondents shall be fined \$250.00 as a civil penalty, and all retail employees of V Superstop in Morrilton, Arkansas must attend an ATC Merchant Education Training within six (6) months of the date of this Order.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 8 yes votes.

**IN THE MATTER OF
MAHER FADEL, and
INGRAM BLVD CITGO LLC
WEST MEMPHIS, ARKANSAS
PERMIT NO. 00549-02**

CASE NO. 2016-314

On August 2, 2016, Respondents' clerk sold single cigarettes, in violation of A.C.A. § 26-57-235(d)(2) – Second Offense.

The Respondents shall be fined \$2,500.00 as a civil penalty, and serve a 30 day suspension of their retail permit. The suspension dates will be set by subsequent notice from the Director.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 8 yes votes.

FULL HEARING

**IN RE: LACY V. HERNDON and
ODDITIES NOVELTIES AND MORE
EL DORADO AR,**

CASE NO. 2016-0177

On April 3, 2016, an investigation was performed on said business and during the course of said investigation, the permittee purchased tobacco, vapor or alternative nicotine products from an unlicensed dealer.

Greg Kirkpatrick addressed Attorney Roland Darrow and asked for him to call his first witness. Mr. Darrow called Agent Tad Huntsman to the stand. Agent Huntsman addressed the board and gave a brief testimony. He stated that he was at the above store doing an inspection of their vapor products. He stated that he asked the store manager to see all the invoices for the product that was in the store. Upon review of the invoices, he found that they had been purchasing their product from an unlicensed wholesaler. Agent Huntsman let the manager know that they had been buying from a wholesaler that did not have an Arkansas license to do business with retailers in the state. At that point is when Agent Huntsman issued a citation for buying vapor product from an unlicensed wholesaler.

Mr. Kirkpatrick then addressed the defendant and let them know it was their time to give their testimony. At that point Mr. Jonathan Miller stepped forward and addressed the board. He stated that he was in no way contesting that they bought from a wholesaler who did not have a license. He had come before the board because he had contacted Herbal Remedies and they told him they did have a license. He stated that he was not aware that he needed to ask if it was an Arkansas license though. That when he called up to the office to ask questions that was never mentioned to him. He said that he has not bought any product from any other person until the result of the hearing due to not wanting to make the same mistake twice. He said Herbal Remedies told him that they had applied for their Arkansas license.

Mr. Kirkpatrick asked Attorney Darrow if he had anything else he would like to add in closing and he said that he wanted to remind the board about the ruling they created in regards to vapor product but nothing more than that. Mr. Kirkpatrick then address the defendant Mr. Miller and asked if he had anything else he would like to add in closing and he said no.

A motion was made to fine the respondents \$500 with a 10 day suspension, suspending the 10 days if no violations happen within 18 months.

The motion passed with 8 yes votes.

LENIENCY HEARING OR BOARD MANDATED HEARINGS

**IN RE: SAROJ SIGDEL and
ON THE WAY #5
FAYETTEVILLE AR,**

CASE NO. 2016-0220

On May 12, 2016, an inspection was performed on said business and during the course of said investigation, subjects were found to have failed to maintain invoices for all tobacco products on premises.

Greg Kirkpatrick addressed Attorney Roland Darrow and asked for him to call his first witness. Mr. Darrow called Agent Bill Holohan to the stand. Agent Holohan addressed the board and gave a brief testimony. He stated that he was at the above store doing an inspection of all the tobacco product in the store. Agent Holohan asked the store manager for all the invoices. Upon further review of the invoices, it was discovered that there was product in the store that was not on any of the invoices that he was provided with. The manager told Agent Holohan that the product may have come from the sister store On the Way #1. Agent Holohan asked to speak with the owner. Once he spoke with the owner, it was discovered that they did in fact move tobacco product from one store location to another and did not keep proper documentation of the transfer. The manager stated that all they did was keep receipts.

Mr. Kirkpatrick then addressed the defendant and let him know it was his time to give his testimony. At that point Mr. Saroj Sigdel stepped forward and addressed the board. He stated that he was not there to contest and that he was not aware that it could not just be receipts of the product moved but that it had to be an actual invoice list when you move tobacco product from one store to another. He stated that he would pay the fine but that he was asking for leniency on the suspension.

Mr. Kirkpatrick asked Attorney Darrow if he had anything else she would like to add in closing and Attorney Darrow stated that he did not. Mr. Kirkpatrick then address the defendant Mr. Sigdel and asked if he had anything else he would like to add in closing and he stated again that he was asking for leniency on the suspension.

A motion was made to fine the respondent \$500 with a 5 day suspension.

The motion passed with 8 yes votes.

Deputy Director Sled gave a brief update on the Enforcement division activities and compliance check rates. Said everything was going well and provided a graph chart for the board to illustrate the progress. He gave a brief on Mandy Miller and that she is very busy with training classes. He also stated that Deputy Director Larry Owens was on vacation but that he was able to get some information to share with the board before he left. He stated that all was well with FDA and that 9/30/16 was the official close out for their fiscal year.

Director Steve Goode notified the board that the agency had recently been audited by Arkansas Legislative Audit for the two-year period ended June 30, 2016. There were no findings during this audit, but there were two supplemental internal control and compliance items. The first item was that the board failed to review the audit from the previous year. The minutes did not document any review by the board. The second item was that Arkansas Tobacco Control did not supply fines receivable data to our service bureau liaison.

ADJOURNMENT

In closing, Mr. Case announced the next Board Meeting will be November 3, 2016, and then the meeting was adjourned.

Minutes prepared by

October 10, 2016

Christi Harper

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