



ARKANSAS TOBACCO CONTROL



Asa Hutchinson
Governor

Steve Goode
Director

BOARD MEETING MINUTES FEBRUARY 4, 2016

The Arkansas Tobacco Control Board met on Thursday, February 4th, 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 Mr. Kevin Case Chairman, Dr. Shabbir Dharamsey, Ms. Carol Dyer, Mr. Steve Lightle, Dr. J.J. Lacey Jr., Dr. Brad Mayfield, Mr. Sam Stathakis Jr. and Mr. Jay Hickey.

Mr. Case began the meeting with a "Welcome" to those attending. He then introduced Mr. Greg Kirkpatrick serving as the Hearing Officer and Mrs. Jana Perry serving as Court Reporter. Mr. Case then proceeded with the meeting.

Mr. Case asked for a motion to approve the board meeting minutes from January 7, 2015.

The minutes were approved with 8 yes votes.

The default list dated February 4, 2016 was presented and read aloud by Attorney Roland Darrow.

This list was approved with 8 yes votes.

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

CONSENT ORDERS

**IN RE: DEVIN DESAI and JDS BEVERAGE, LLC
DBA TRUMAN FOOD MART and HELENA FOOD MART
TRUMANN, ARKANSAS and HELENA, ARKANSAS
PERMIT NO. 01710-02 and 01648-02**

**CASE NOS. 2015-136
& 2015-143**

On April 9, 2015, Respondents' Trumann business was the subject of a store inspection. During the course of that inspection, it was discovered that Respondents possessed untaxed tobacco products, were found to have purchased some of said untaxed tobacco products from an unlicensed dealer, and failed to maintain invoices on all tobacco products on the business premises as required by law, all in violation of state law.

In Case No. 2015-136, Respondents' are guilty of violating Ark. Code Ann. § 26-57-245, § 26-57-228 and § 26-57-213 and agree to be penalized as set forth below.

The Respondents are fined \$4000.00 as a civil penalty for the violation of A.C.A. § 26-57-245, Respondents' retail permit is ordered suspended for a period of 10 days and the confiscated product is ordered destroyed; Respondents are fined \$500.00 as a civil penalty for the violation of A.C.A. § 26-57-228 and Respondents' retail permit is ordered suspended for a period of 10 days; Respondents are fined \$500 as a civil penalty for the violation of A.C.A. § 26-57-213 and Respondents' retail permit is ordered suspended for a period of 5 days. Said suspensions are to be served concurrently.

On April 15, 2015, Respondents' Helena business was the subject of a store inspection. During the course of that inspection, it was discovered that Respondents possessed untaxed tobacco products and failed to maintain invoices on all tobacco products on the business premises as required by law, all in violation of state law.

In Case No. 2015-143, Respondents' are guilty of violating Ark. Code Ann. § 26-57-245 and § 26-57-213 and agree to be penalized as set forth below.

The Respondents are fined \$7000 as a civil penalty for the violation of A.C.A. § 26-57-245, Respondents' retail permit is ordered suspended for a period of 5 days and the confiscated product is ordered destroyed And Merchant Education Training to be completed within 6 months of hearing date; Respondents are fined \$500 as a civil penalty for the violation of A.C.A. § 26-57-213 and Respondents' retail permit is ordered suspended for a period of 5 days and Merchant Education Training to be completed within 6 months of hearing date. Said suspensions are to be served 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 RE: MALLORY NIMOCKS and
NIMOCKS OIL CO. INC. DBA CIRCLE N EXXON #200
WYNNE, ARKANSAS
PERMIT NO. 00598-01**

CASE NO. 2015-506

On December 10, 2015, Respondents' clerk sold a tobacco product to a minor for a second time within forty-eight months and are 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 Circle N Exxon #200 in Wynne, Arkansas must attend an ATC Merchant Education Training class 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: LAILA MANDANI and
MALS, LLC
CLARKSVILLE, ARKANSAS
PERMIT NO. 05640-02**

CASE NO. 2015-247

On July 29, 2015, Respondents' clerk sold a tobacco product to a minor for a fifth time within forty-eight months, in violation of A.C.A. § 5-27-227(a)(1).

The Respondents shall be fined \$2000.00 as a civil penalty, have their retail permit be suspended for 10 days, and all employees of Mals, LLC in Clarksville, Arkansas must attend an ATC Merchant Education Training class 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.

LENIENCY HEARING OR BOARD MANDATED HEARINGS

**IN RE, SONJA HUBBARD and E-Z MART #217
DE QUEEN, AR**

CASE NO. 2015-0432

On October 27, 2015, a compliance check was performed on said business and during the course of said compliance check, a tobacco product was sold to a minor.

Mr. Kirkpatrick addressed Attorney Roland Darrow and asked for him to call his first witness. Mr. Darrow called Investigator Daniel Heflin to the stand. Mr. Heflin addressed the board and began his testimony. He stated that upon arrival to the store he instructed his minor to go inside and purchase tobacco product. That is when Attorney Darrow address the board and told them they had video of the purchase. So the video was played for the board and the audience. Once the video concluded, Mr. Kirkpatrick asked Mr. Heflin if he had any further testimony to present and he said no.

Mr. Kirkpatrick address the defendant and explained that it was his time to give testimony. Mr. George DeLoach from the corporate office was representing for Mrs. Hubbard in regards to this case. He addressed the board and said that he in no way was contesting the fact that one of his store clerks sold to a minor and completed that transaction. He was there to let them know of all the actions and steps that have been taken and are being taken to further keep this from happening. He stated they have a POS system in place that the clerks know how override if they so choose and they do. He also said they have constant in house training and that they attend Many Millers Training courses at least 2-3 times a year as possible. He asked the board to lift the suspension and just levy a fine. He said that the suspension would hurt worse than the fine. He also wanted to make sure that the board knew that they are going above and beyond to make sure their stores do not sell to minors. He thanked the board for hearing his testimony.

Mr. Kirkpatrick then after hearing both testimonies called for closing arguments. Mr. Darrow asked the board to levy an appropriate fine and or suspension for this store given this was their third offense within 48 months.

Mr. Kirkpatrick then addressed Mr. DeLoach for his closing statement and Mr. DeLoach had none. Mr. Kirkpatrick then addressed the board for a motion.

Mr. Sam Stathakis presented a motion to the board of \$500.00 fine with no suspension since the store and corporate have gone above and beyond to take care of this situation and preventing it from happening again. He said there is only so much you can do when you do everything they are to keep the clerk from selling to a minor.

Before a motions was passed Chairman Case asked for Mr. Christi Harper to do a roll call. All were present and accounted for.

The motion passed with 8 yes votes.

FULL HEARING OR BOARD MANDATED HEARINGS

**IN RE, RICKEY JONES and RICK'S EXPRESS INC.
LAKE VILLIAGE, AR**

CASE NO. 2015-0402

On October 6, 2015, a compliance check was performed on said business and during the course of said compliance check, a tobacco product was sold to a minor.

Mr. Kirkpatrick addressed Attorney Roland Darrow and asked for him to call his first witness. Mr. Darrow called Agent Linda Card to the stand. Agent Card addressed the board and began her testimony. She stated that upon arrival to the store she instructed her minor to go inside and try to purchase tobacco product. That is when Attorney Darrow address the board and told them they had video of the purchase taking place. So the video was played for the board and the audience. Once the video concluded, Mr. Kirkpatrick asked Agent Card if she had any further testimony to present and she said no.

Mr. Kirkpatrick address the defendant and explained that it was his time to give testimony. Mr. Danyel Bettis was given full right to represent Rick's in front of the board per the power of attorney that was provided to the board. The board took a minute to review and then acknowledge that the power of attorney was acceptable enough to grant him the right to represent Rick's in place of the owner himself. Mr. Bettis then addressed the board and said that he in no way was contesting the fact that one of his store clerks sold to a minor and completed that transaction. He was there to let them know of all the actions and steps that have been taken and are being taken to further keep this from happening. He stated they have a POS system in place, that he has taken the things that he learned from Mrs. Mandy Millers training and made it their own as well as conduct in house training courses similar to the training Mr. Miller does. He also said they have cameras set up know to record audio and they watch these weekly to make sure that the clerk is complying to the rules. He stated that he was not sure that much more could be done than what they were already doing to insure that their clerks do not sell to minors. He then asked the board to not give a suspension on top of the fine and just to give them the fine. He said that the suspension would hurt worse than the fine and he would rather pay more in fines then to have a suspension.

Mr. Kirkpatrick then after hearing both testimonies called for closing arguments. Mr. Darrow asked the board to levy an appropriate fine and suspension for this store given this was their third offense within 48 months.

Mr. Kirkpatrick then addressed Mr. Bettis for his closing statement and Mr. Bettis again asked the board to not given them a suspension but to just let them have the fine. Mr. Kirkpatrick then addressed the board for a motion.

Dr. Dharamsey presented a motion to the board of \$500.00 fine with a one day suspension due to this being their third offense in 48 months and Merchant Education Training. He said that this situation was similar enough in structure to the previous case but different enough to warrant a different penalty. He said that they could have tried a bit harder in their attempts at training or getting additional training for the clerks.

Before a motions was passed Chairman Case asked for Mr. Christi Harper to do a roll call. All were present and accounted for.

The motion passed with 8 yes votes.

WHOLESALE APPLICATIONS

No new Wholesale permits were issued for this month.

Deputy Director Sled gave a brief update on the Enforcement division activities and compliance check rates. He stated that the rate of violations has decreased. He then gave a brief on the amount of un-paid fines from 2002- present and that amount came to \$714,375. He stated that the last 3 years total for fines not collected is approximately \$200,000. He said they are still looking into this matter to resolve and collect the un-paid fine amount.

He then addressed the Board to introduce Tim Parker, the newest investigator to the Arkansas Tobacco Control Agency. He is a retired Deputy Chief from Louisiana who moved here due to close family friends who live here. Everyone welcomed him to the team!

Deputy Director Larry Owens gave a brief update on the activities in the FDA Division and said there was not much to report.

Chairman Kevin Case then addressed the board in closing and asked if there was any conflict with next month's board meeting and there was none.

ADJOURNMENT

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

Minutes prepared by

Christi Harper

February 10, 2016

Christi Harper