



Asa Hutchinson
Governor

ARKANSAS TOBACCO CONTROL



Steve Goode
Director

BOARD MEETING MINUTES JANUARY 7, 2016

The Arkansas Tobacco Control Board met on Thursday, January 7th, 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 December 3rd, 2015.

The minutes were approved with 8 yes votes.

The default list dated January 7th, 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: NAZIM ALI and
S & A ALLIANCE, INC. DBA KWIK STOP
EL DORADO, ARKANSAS
PERMIT NO. 08094-02**

CASE NO. 2015-187

On May 28, 2015, Respondents' business was the subject of a store inspection. During the course of that inspection, it was discovered that Respondents possessed untaxed tobacco products, failed to maintain invoices on said tobacco products as required by law, failed to have server awareness forms on file for all employees and was found to be selling Kamel Red cigarettes below state minimum price, all in violation of state law.

Respondents' are guilty of violating Ark. Code Ann. § 26-57-245, § 26-57-228, and A.T.C.B. Rule 4.1 and agree to be penalized as set forth below.

The Respondents are fined \$9,400.00 as a civil penalty for the violation of A.C.A. § 26-57-245, Respondents' retail permit is ordered suspended for a period of 5 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 5 days; Respondents are issued a Warning for the violation of A.T.C.B. Rule 4.1; and Respondents are fined \$100.00 for the violation of A.C.A. § 4-75-708. 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: BARBAR SAGHEER & MATLOOB HUSSAIN and
MIRAJ FLASH MARKET
GREENBRIER, ARKANSAS
PERMIT NO. 00729-02**

CASE NO. 2015-210

On June 22, 2015, Respondents' business was supposed to be serving a suspension of their Retail Permit, Respondents sold tobacco products during the time their Retail permit was suspended for a second time. Respondents also accepted a delivery of tobacco products the same day, in violation of their permit suspension. On June 29, 2015, Respondents again received a delivery of tobacco products while their permit was suspended, all in violation of state law.

Respondents' are guilty of violating Ark. Code Ann. § 26-57-226 by selling tobacco products a second time while their permit was suspended and by

accepting deliveries of tobacco products twice while their permit was suspended.

The Respondents are fined \$2000.00 as a civil penalty for the violation of A.C.A. § 26-57-226 Selling Tobacco on a Suspended Permit and Respondents' retail permit is ordered suspended for a period of 4 days; Respondents are fined \$500.00 as a civil penalty for each of the violations of A.C.A. § 26-57-226 Purchasing Tobacco on a Suspended Permit.

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: SONJA HUBBARD and
E-Z MART #188 & E-Z MART #42
MOUNTAIN HOME & FORT SMITH, ARKANSAS
PERMIT NO. 00081-01 & 02203-01**

**CASE NOS. 2015-395
& 2015-480**

On October 6, 2015, Respondents' clerk at E-Z Mart #188 in Mountain Home sold a tobacco product to a minor for a second time within forty-eight months.

On November 23, 2015, Respondents' clerk at E-Z Mart #42 in Fort Smith sold a tobacco product to a minor for a second time within forty-eight months.

Respondents being responsible for the actions of said clerk, are in violation of A.C.A. § 527-227(a)(1), and are subject to punishment by the Board, pursuant to A.C.A. § 26-57-256.

The Respondents shall be fined \$250.00 as a civil penalty for each violation and all employees of E-Z Mart #188 in Mountain Home, Arkansas and E-Z Mart #42 in Fort Smith, 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: BTISSAM BENNIS and
BEST INTOWN LLC DBA CITGO BLACK ROCK
BLACK ROCK, ARKANSAS
PERMIT NO. 04490-04**

CASE NO. 2015-425

On October 24, 2015, Respondents' clerk sold a tobacco product to a minor for a second time within forty-eight months

Respondents being responsible for the actions of said clerk, are in violation of A.C.A. § 527-227(a)(1), and are subject to punishment by the Board, pursuant to A.C.A. § 26-57-256.

The Respondents shall be fined \$250.00 as a civil penalty and all employees of Citgo Black Rock in Black Rock, 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: KENT KNIGHT and
KNIGHT'S SUPER FOOD STORE #4
CABOT, ARKANSAS
PERMIT NO. 01307-01**

CASE NO. 2015-408

This particular consent order was listed on the default list but at the last minute Attorney Roland Darrow received their consent order in the mail. He addressed the board and asked for this consent order to be expunged from the default list.

The motion passed with 7 yes votes and 1 excused vote.

On October 15, 2015, Respondents' clerk sold a tobacco product to a minor for a second time within forty-eight months.

Respondents being responsible for the actions of said clerk, are in violation of A.C.A. § 527-227(a)(1), and are subject to punishment by the Board, pursuant to A.C.A. § 26-57-256.

The Respondents shall be fined \$250.00 as a civil penalty and all employees of Knight's Food Store #4 in Cabot, 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 7 yes votes and 1 excused vote.

FULL HEARING OR BOARD MANDATED HEARINGS

IN RE, MOHAMED ABDI and NEIGHBORHOOD GROCERY WEST MEMPHIS, AR

On July 29, 2015, an investigation was performed on said business and during the course of that investigation, cigarettes or other tobacco product with unpaid taxes were found on the store premises for a second time, Respondents failed to maintain invoices for all tobacco products on premises for a second time, server awareness forms were not on file for all employees engaged in selling tobacco products and the retail cigarette and tobacco permit was not conspicuously displayed.

Mr. Kirkpatrick addressed Attorney Roland Darrow and asked for him to call his first witness. Mr. Darrow called Investigator David Potter to the stand. Mr. Potter addressed the board and began his testimony. He stated that he and other agents visited the store to conduct an inspection and they found untaxed tobacco inside the store. Investigator Potter said that it is standard that they present their badge and state what agency they are with. When Investigator Potter approached the owner behind the counter and asked for him to provide invoices for his tobacco inventory, the owner became enraged. Investigator Potter stated that after several minutes, Mr. Abdi was able to be calmed and what invoices were present in the store were reviewed but could not account for all of the tobacco found on the store premises. Investigator Potter also stated that no server awareness forms were present in the store, nor was the store's current permit properly displayed. At that point, Attorney Darrow rested his case.

Mr. Kirkpatrick then addressed Mr. Mohamed Abdi and instructed him to give his testimony. Mr. Abdi stated he was sorry he had gotten upset with the investigators, stating that he did not know that Mr. Potter and the other investigators were the law enforcement officers. He said he had obtained the tobacco products in Mississippi but he didn't mean to break the law. He pleaded with the Board to show him mercy and not take away his retail permit.

Mr. Kirkpatrick then after hearing both testimonies called for closing arguments. Mr. Darrow asked the board to render an appropriate fine in regards to the situation. He also recommended the Board consider revocation of Mr. Abdi's permit since this was the second time he had be found with untaxed tobacco and failed to maintain invoices as required by law. Attorney Darrow then called

on Director Goode for his opinion. Mr. Goode addressed the Board and stated that he agreed that given the circumstances, it was his recommendation that Mr. Abdi's retail permit be revoked.

Mr. Abdi, in closing, asked the Board to please not take his permit away as he had no other means of income and that he was truly sorry for his actions. Mr. Kirkpatrick then turn the hearing over to Chairman Case who addressed the board for a motion.

Mr. Sam Stathakis presented a motion of \$3,025 fine due to this being his second offense for obtaining and selling untaxed tobacco products, a \$5,000 fine for the second offense failure to maintain invoices, destruction of all said tobacco product that was confiscated from the store and revocation of his permit. The total final fine amount being \$8,025 and revocation of the retail permit. Mr. Stathkis addressed Mr. Abdi and stated that Mr. Abdi has had dealings with the Tobacco Control Board before and that he was made very aware of what was expected of him from his first offenses. Mr. Case then addressed the board and asked if anyone would second that motion and there was a second.

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 sales of untaxed tobacco in the state has increased. He commends all his agents for their hard work in the fight against and to ultimately stop the sale of untaxed tobacco into the State of Arkansas. He said that he feels they are making great strides in achieving this goal due to the excellent work the agents have done and are doing.

Deputy Director Larry Owens gave a brief update on the activities in the FDA Division and announced that the last contracted year with the rate for violations being 6.7 that they completed \$3,904 inspections as a result. He said they still have 12 cases pending but that he is hopeful they will be resolved soon.

Attorney General's Office Sarah Farris gave a brief update and wanted the board to welcome the newsiest graduate of law school and new to the AG's office Mr. Reid Atkins. She said they are very excited to have him as part of the staff and that he will be attending the board hearings from now on with her.

Chairman Kevin Case then addressed his fellow board members and the Tobacco Control agents and commend them for the way they handled the Neighborhood Grocery situation. He said he knew it was a tough decision to make but that it was one that needed to be made to insure safety of agents and the community.

He said it's good to see our office come alongside and protect our own but also protect the community as well. He said he is honored to serve with such great people.

ADJOURNMENT

In closing, Mr. Case announced the next Board Meeting will be February 4, 2016, and then the meeting was adjourned.

Minutes prepared by

Christi Harper

January 11, 2016

Christi Harper