



Asa Hutchinson  
Governor

## ARKANSAS TOBACCO CONTROL



Steve Goode  
Director

### BOARD MEETING MINUTES NOVEMBER 5, 2015

The Arkansas Tobacco Control Board met on Thursday, November 5<sup>th</sup>, 2015 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. Mark Ohrenberger 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 October 8<sup>rd</sup>, 2015.

The minutes were approved with 8 yes votes.

The default list dated November 5<sup>th</sup>, 2015 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: AMEEN VIRANI and  
VMART LLC  
CABOT, ARKANSAS  
PERMIT NO. 07563-04**

**CASE NO. 2015-340**

On September 9, 2015, Respondents' business possessed untaxed tobacco products and respondents were found to have purchased said untaxed tobacco products from an unlicensed dealer in violation of state law and Ark. Code Ann. § 26-57-245 and § 26-57-228.

Respondents' are guilty of violating Ark. Code Ann. § 26-57-245 and § 26-57-228 and agree to be penalized as set forth below.

The Respondents are fined \$750.00 as a civil penalty for the violation of A.C.A. § 26-57-245, Respondents' retail permit is ordered suspended for a period of 15 days and the confiscated product is ordered destroyed; Respondents are fined \$250.00 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 15 days. Said suspensions are to be served consecutively. The Director of Arkansas Tobacco Control shall notify Respondents of the exact dates of the permit suspension by subsequent notice.

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: ARUN K. DOSHI and  
ALBERT PIKE 66, INC.  
HOT SPRINGS, ARKANSAS  
PERMIT NO. 07797-02**

**CASE NO. 2015-284**

On August 13, 2015, 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).

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 Albert Pike 66, Inc. in Hot Springs, 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: CHUNOK YOO and  
QUICK STORE  
MABELVALE, ARKANSAS  
PERMIT NO. 08448-03**

**CASE NO. 2015-374**

On September 22, 2015, 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).

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 Quick Store in Mabelvale, 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: YASMIN MANDANI and  
H & M FOOD MART LLC  
CONWAY, ARKANSAS  
PERMIT NO. 05499-04**

**CASE NO. 2015-329**

On September 01, 2015, 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).

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 H & M Food Mart LLC in Conway, 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: PAUL HUTSON and  
PAUL'S TOBACCO INC.  
MONTICELLO, ARKANSAS  
PERMIT NO. 07136-01**

**CASE NO. 2015-334**

On August 24, 2015, 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).

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 Paul's Tobacco Inc. in Monticello, 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: STEEPHAN JOSEPH and  
J-SQUARE INC.  
CONWAY, ARKANSAS  
PERMIT NO. 06025-01**

**CASE NO. 2015-349**

On September 14, 2015, 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).

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 J-Square, Inc. in Conway, 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.

#### **FULL HEARING OR BOARD MANDATED HEARINGS**

#### **IN RE, HARIKA PATEL and PRAMUKHVARSHA INC. dba DIVINE GAS PARAGOULD, AR**

On April 9, 2015, an investigation was performed on said business and during the course of that investigation, tobacco products with unpaid taxes were found inside the store. When questioned about the discovered tobacco products and asked to provide invoice documentation of purchasing said tobacco, the respondents could not provide sufficient invoice documentation to the agent. They provided other invoice documentation from others stores they own but not the store in question. They were cited for possession of untaxed tobacco and failure to maintain invoices.

The Agency presented testimony by Agent Chris Crary who testified as to the discovery of the untaxed tobacco and the search for and lack of invoices to account for said tobacco. The Respondents through Mr. Patel stated that they were not contesting that they bought and sold untaxed tobacco product and could not provide proper invoice documentation. Mr. Patel stated that the main reason as to why they didn't have invoices was due to the fact that his wife had to step down from managing all their stores and take care of their grandchild as a result of their daughter being deployed for active duty. He apologized for their lack of proper documentation and book keeping and asked the board to wave the 15 day suspension so they could make money.

Mr. Ohrenberger called for closing arguments. Mr. Darrow asked the board to render an appropriate fine and suspension as penalty for the violations, stating the Respondents have provided the board with sufficient evidence that Mr. Patel did not keep proper invoices on tobacco products kept in the store and that this was not Respondents' first offense amongst their many other stores. Respondents made no closing.

Dr. Dharamsey presented a motion of mandatory record keeping assistance, a fine of \$2,925 and 15 day suspension with the condition that the 15 day suspension would be suspended if they did not have any further violations within 1 year with all confiscated tobacco products to be destroyed. After discussion with Director Goode, Attorney Darrow addressed the board with an option to the motion, stating that while they do not in the merchant education training, training in proper invoice and book keeping, the Agency could have an agent assist Mr. Patel in showing him the proper way to keep invoice documentation of all tobacco product in his store. Mr. Ohrenberger then addressed Dr. Dharamsey and asked if this was what he was trying to propose and Dr. Dharamsey said yes. Dr. Lacey then addressed Mr. Ohrenberger and asked for him to restate the motion so as to clear up all the confusion that took place. Mr. Ohrenberger restated the motion as follows: the Respondents will be given assistance via an Arkansas Tobacco Control Agent showing him how to keep proper invoice documentation and educating him on tobacco law in general, that Respondents will be fined \$2,925 with a permit suspension of 15 days with the 15 day suspension held in abeyance pending no further violations within 1 year, and all employees of Divine Gas will attend ATC Merchant Education Training provided by Ms. Miller, also to be done so within 1 year of the date of the Order and all confiscated tobacco products are to be destroyed.

The motion passed with 8 yes votes.

**IN RE, LAMARK HOBBS and HOBBS TURNROW LIQUOR  
ARKANSAS CITY, AR**

On June 18, 2015, an investigation was performed on said business and during the course of that investigation, it was discovered that the Respondents failed to maintain invoice documentation for all tobacco products inside the store as required by law. It was also discovered that the store purchased tobacco products from unlicensed dealers.

Mr. Ohrenberger addressed the audience to see if there was anyone present for Hobbs Turnrow Liquor but no one stepped forward. He then addressed Mr. Darrow and asked if he would like to give an opening statement. Mr. Darrow said yes and asked the board to consider an appropriate fine and penalty for this store given the fact they were given notice of the hearing and failed to appear. Testimony was presented by Agent Linda Card that substantiated the allegations in the Notice of Hearing. Mr. Ohrenberger then addressed the board and asked if they had a motion. Chairman Keven Case then addressed Mr. Darrow and asked for his opinion as to the proper penalty. Mr. Darrow said stated that for the possession of untaxed tobacco, he recommended a \$3,000 fine, a 5 day suspension and destruction of the confiscated product, and for the purchasing from an unlicensed dealer, a \$500 fine and a 5 day suspension. Mr. Case stated that he felt that was a fair penalty and the board agreed.

A motion was made to that effect and the motion passed with 8 yes votes.

## **WHOLESALE APPLICATIONS**

Seven Wholesale Tobacco, Vapor Product and Alternative Nicotine Product applications that have met the requirements of Section 3 of the A.T.C.B. Rules were presented to the Board for approval and issuance. The application were for:

K & K Distributing – Pocahontas AR,  
B & R Enterprises – Hueytown AL,  
5 Different Sam’s Club West – State Wide

A motion was made to approve all seven applications and was passed with 7 yes votes and one abstention as the newest board member had not received the list of new wholesalers in time to review it.

Chairman Kevin Case requested that the Board issue a blanket approval of the new permits issued from October 7<sup>th</sup>. through November 4<sup>th</sup>., 2015. After the Board reviewed the list of permits, a motion was made to approve the new permits and was passed with 7 yes votes and one abstention.

Chairman Case then requested the Board grant a blanket approval of the accepted offers of settlement received by ATC prior to November 5<sup>th</sup>, 2015. After review of the offers accepted list, a motion was made to approve the accepted offers of settlement on the list.

The motion passed with 7 yes votes and one abstention.

Deputy Director Sled gave a brief update on the Enforcement division activities and let the board know that the agency is in the process of conducting interviews to fill the open positions of Auditor / Investigator due to Charles Pittman accepting a job offer elsewhere and Enforcement Agent, due to Jimmy Massie retiring. The candidates are promising and he hopes to have a decision made soon.

Deputy Director Larry Owens gave a brief update on the activities in the FDA Division and announced that this year’s audit went well and that all the information from this year’s statistics are now available on their website.

Director Goode then addressed the board to let them know about something that Altria is proposing to do here in the state. He said part of what they are proposing, having retailers give gasoline discounts for customers purchasing cigarettes, would violate the Combination Sale statute. He said he does not think nor feel this is a smart move and would do the state and local business any good. He is in opposition against this new movement. The board agreed and thank Director Goode for letting them know.

**ADJOURNMENT**

In closing, Mr. Case announced the next Board Meeting will be December 3<sup>rd</sup>, 2015, and then the meeting was adjourned.

Minutes prepared by

November 6, 2015

*Christi Harper*

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