



ARKANSAS TOBACCO CONTROL



Asa Hutchinson
Governor

Steve Goode
Director

BOARD MEETING MINUTES OCTOBER 8, 2015

The Arkansas Tobacco Control Board met on Thursday, October 8th, 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 7 – Board members present with 1 open position. Those attending were Mr. Kevin Case, Dr. Shabbir Dharamsey, Ms. Carol Dyer, Mr. Steve Lightle Chairman, Dr. J.J. Lacey Jr., Dr. Brad Mayfield and Mr. Sam Stathakis Jr.

Mr. Lightle began the meeting with a “Welcome” to those attending. He then introduced Mr. Greg Kirkpatrick serving as the Hearing Officer and Mrs. Nicole Hardwick serving as Court Reporter. He then addressed the audience and introduced Mr. John Hauge. He presented Mr. Hauge with a plaque for his service to the Arkansas Tobacco Control Board. He thanked him for his many years of service to the Board and for all that he has done and for the legislative changes that he helped get put into place. There was a brief moment of all in attendance thanking Mr. Hauge. Then Mr. Lightle proceeded with the meeting.

Mr. Lightle asked for a motion to approve the board meeting minutes from September 3rd, 2015.

The minutes were approved with 7 yes votes and 1 open position.

The default list dated October 8th, 2015 was presented and read aloud by Attorney Roland Darrow.

This list was approved with 7 yes votes and 1 open position.

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

CONSENT ORDERS

**IN RE: SHIRIN ALI and
ZIYA LLC
MAYFLOWER, ARKANSAS
PERMIT NO. 00758-05**

CASE NO. 2015-311

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 Ziya LLC. in Mayflower, 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 open position.

**IN RE: DHARMESH GANDHI and
STATION ONE
BERRYVILLE, ARKANSAS
PERMIT NO. 00269-02**

CASE NO. 2015-207

On June 23, 2015, Respondents' business was the subject of a store inspection. During the course of that inspection, it was discovered that Respondents possessed and sold cigarettes without sufficient tax stamps affixed to cover the entire amount of tax due and Respondents also failed to maintain invoices on the tobacco products transferred from their Siloam Spring store to their Berryville store as required by law.

Respondents' actions as described in paragraph seven above, are violations of Ark. Code Ann. § 26-57-234(a)(1) and § 26-57-213 and are subject to punishment by the Board, pursuant to A.C.A. § 26-57-256.

The Respondents are fined \$750.00 as a civil penalty for the violation of A.C.A. § 26-57-234(a)(1) and the confiscated product is ordered destroyed;
Respondents are fined \$250.00 as a civil penalty for the violation of A.C.A. §

26-57-213 and Respondents' permit is ordered suspended for a period of 2 days. 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 7 yes votes and 1 open position.

**IN RE:
CHANDRIKA S. PATEL and
BAPA, INC. DBA INDIAN GROCERS
LITTLE ROCK, ARKANSAS
PERMIT NO. 11486-01**

CASE NO. 2014-680

Respondents agree that, from June 6, 2013 through November 24, 2014, Respondents engaged in the purchase of certain tobacco products, from an unlicensed dealer, upon which Arkansas tobacco excise taxes had not been paid. Respondents, during the same time period, sold said untaxed tobacco products from their permitted retail location. Additionally, Respondents failed to keep the invoices on said tobacco products as required by law.

Respondents further agree that, their actions described above violate Arkansas Code Annotated § 26-57-245, 26-57-228 and 26-57-213 and that said violations are punishable pursuant to A.C.A. § 26-57-248 and 26-57-256.

The Respondents are fined \$24,400.00 pursuant to A.C.A. § 26-57-248 as a civil penalty for this second violation of the A.C.A. § 26-57-245 with \$20,000.00 suspended pending successful completion of a one year probation wherein Respondents must not commit any future violations of § 26-57-245. Additionally, Respondents Retail Cigarette, Tobacco, Vapor and Alternative Nicotine Product Permit No. 11486-01 is suspended for a period of fifteen days. In the event Respondents do violate § 26-57-245 during the one year probation period, the suspended \$20,000.00 will immediately become due and payable in addition to any penalty assessed for the subsequent violation of § 26-57-245. The one year probation period shall commence upon date of the approval of this Consent Order by the Board. Respondents are also fined \$500.00 and their retail permit is suspended for five days for the violation of A.C.A. § 26-57-228. Respondents are also fined \$500.00 and their retail permit is suspended for five days for the violation of A.C.A. § 26-57-213. In addition to these penalties, Respondents agree and acknowledge that the tobacco products confiscated by Arkansas Tobacco Control from Respondents shall be and are hereby ordered destroyed. All suspensions shall be set by subsequent notice from the Director of Arkansas Tobacco Control and shall be run consecutively. This Consent Order in no way relieves Respondents from liability for any tobacco excise tax assessment made by the Arkansas Department of Finance

and Administration. Respondents are allowed to pay their immediate fine balance of \$5,400.00 in the amount of \$300.00 per month beginning November 1, 2015 and being due the first of each month. 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 open position.

**IN RE: BARRY F. LILLARD and
HAWGS EXXON
BATESVILLE, ARKANSAS
PERMIT NO. 09659-01**

CASE NO. 2015-372

On September 21, 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 Hawgs Exxon in Batesville, 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 open position.

IN RE: USE & BENEFIT ORDER

A Use & Benefit Order was presented to the Board so the Agency could use evidence from the listed cases for educational purposes, training and all other appropriate law enforcement uses.

A motion was made to approve the Use & Benefit Order and was passed with 7 yes votes & 1 open position.

FULL HEARING OR BOARD MANDATED HEARINGS

**IN RE: WALID KHERIBI, Permittee
dba: W & S OF WEST MEMPHIS LLC DBA EXXON
1700 NORTH MISSOURI
WEST MEMPHIS, AR 72301**

On September 9, 2015 it was noted that Respondents, having agreed and been required to have all employees attend ATC Merchant Education Training within six months of February 5, 2015 in partial settlement of a third offense sale-to-minor violation. Attorney Roland Darrow called Mandy Miller to the stand. After Mrs. Miller was sworn in, Attorney Darrow asked for her to state to the board what she had done to make sure this store owner complied with the above ruling. Mrs. Miller stated that she sent notice of the next training to the store owner by certified mail and that she knows he received it because he signed for it. Attorney Darrow then asked if the store owner and employees ever showed to the said training she had notified them of and Mrs. Miller stated they did not attend nor did they try to contact her about the next training. So she sent yet another training notice to the store by certified mail and the store owner signed for the letter the second time as well. Attorney Darrow asked Mrs. Miller if the store owner and the employee's showed for that training session and she said no they did not nor did they try or make any attempt to contact her to let her know they would not be present and to find out when the next training would be held. So the store owner, Walid Kheribi and the employees failed and refused to have any employees attend two ATC Merchant Education Training Events held nearby despite receiving notice of and signing for said notices sent by Mrs. Mandy Miller by certified mail.

The Respondents' conduct is a violation of an approved Offer of Settlement which constitutes a violation of an order of the Board, punishable pursuant to A.C.A. § 26-57-256

A fine in the amount of Five Thousand Dollars (\$5000.00) and a 30 day suspension of Respondents Retail Permit is hereby imposed for this violation. Additionally, all store employees must attend a regional ATC Merchant Education Training session within six months of the date of this Order or the Respondents' Retail Permit is and shall be revoked at that time without further proceedings.

The motion passed with 7 yes votes and 1 open position.

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:

Cigar Werks Inc – St. Charles, IL
Vapor-Riffic Inc. – Conway, AR
John Renfro Supply Co. – Williamsburg, KY
Jay Hickey Vapor LLC. – Texarkana, AR
Impulse Plus Inc. – Marshfield, MO
The Vapor Connection – Little Rock, AR
Razor Vapes LLC. – North Little Rock, AR

A motion was made to approve all seven applications and was passed with 7 yes votes and 1 open position.

Chairman Lightle requested that the Board issue a blanket approval of the new permits issued from September 2nd. through October 7th., 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 1 open position.

Chairman Lightle then requested the Board grant a blanket approval of the accepted offers of settlement received by ATC prior to October 8th., 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 1 open position.

Chairman Steve Lightle addressed Director Goode and Attorney Darrow and asked if they could give the name of the new board member that has been elected. Attorney Darrow stated that the new board member's name is Jay Hickey and that he is a vapor wholesaler.

Deputy Director Sled gave a brief update on the Enforcement division activities and let the board know the status of where things are at with the vapor stores in the state. Mr. Sled stated that to date, Arkansas Tobacco Control has issued 83 vapor permits to vapor stores across the state. There are still currently 43 stores they have not been able to reach yet but they are in the process of reaching those stores and helping them get their vapor permit. He is hopeful that all the vapor stores in the state will be permitted before then end of this year.

Deputy Director Larry Owens gave a brief update on the activities in the FDA Division and announced that they have officially finished out their fiscal year. They have a few cases that they are in the process of closing and they have been approved already for the next fiscal year.

ADJOURNMENT

In closing, Mr. Lightle announced the next Board Meeting will be November 5th, 2015, and then the meeting was adjourned.

Minutes prepared by

Christi Harper

October 12, 2015

Christi Harper