



**State of Arkansas  
Department of Finance  
And Administration**

**DFA – ARKANSAS TOBACCO CONTROL**  
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**BOARD MEETING MINUTES  
December 1, 2022**

The Arkansas Tobacco Control Board met on Thursday, December 1, 2022, 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 six (6) Board members present.

- **Board Members Present:** Chairman Gary Proffitt Jr., Dr. Brad Mayfield, Mr. Sam Stathakis, Mr. Brent Summerhill, Dr. Shabbir Dharamsey, and Mr. David Hendrix Jr.
- **Absent Board Members:** Mr. Kerry Lott and Dr. Patricia Knott

**CALL TO ORDER.**

- Chairman Gary Proffitt called the ATC Board meeting to order and opened the meeting welcoming the guests and staff.
- Chairman Gary Proffitt introduced and welcomed Jason Johnson as the Hearing Officer and Jennifer Barnett as the Court Reporter.

**BOARD MEETING MINUTES**

Chairman Gary Proffitt requested a motion to approve the Board Meeting Minutes from November 3, 2022. A motion was made by Mr. Sam Stathakis and seconded by Mr. David Hendrix, JR. to approve the November 3, 2022 minutes. Motion passed with six (6) yes votes and zero (0) opposing votes.

**LENIENCY HEARING**

**CASE NO. 2022-06930  
IN THE MATTER OF  
FAMILY STOPS USA  
dba PIC-N-TOTE  
BRANDON RICHMOND  
8405 SOUTH ZERO STREET, SUITE C  
FORT SMITH, ARKANSAS 72903**

**Violation:** Sale to Minor – THIRD OFFENSE in violation of A.C.A. § 5-27-227(a)(1)(A)

Mr. Jason Johnson, an Attorney, served as Hearing Officer. Ms. Jennifer Barnett served as the Court Reporter. Mr. BRANDON RICHMOND and Mr. JONATHAN GRIFFIN appeared and offered testimony as the representatives of FAMILY STOPS USA dba PIC-N-TOTE (collectively, “Petitioner”),



*pro se.* ATC Attorney, William R. Olson, appeared on behalf of Arkansas Tobacco Control ("ATC"). ATC Director Greg Sled also appeared and offered testimony.

The Hearing Officer admitted ATC's Exhibit 1 into evidence. No party objected to the admission of ATC's Exhibit 1, which included, but was not limited to, a packet containing an ATC Agent narrative, photographs, the Notice of Offer and Settlement, the Petitioner's request for leniency hearing, and the Notice of Hearing. Prior to the Hearing, Petitioner and ATC stipulated to written facts and law. This written Stipulation of Facts and Law was accepted by the Hearing Officer into evidence as ATC's Exhibit 2.

ATC Attorney Will Olson read admitted Stipulations of Fact and Law into the record. Mr. Jonathan Griffin testified that "we put twenty people" through ATC training classes, and it is "not an excuse that anybody else doesn't have" - "We had a management problem at that store" and are looking to reduce the permit suspension period. Mr. Griffin also testified that the store was working on having the override selection on the ID scanner removed. Mr. Brandon Richmond testified they had "three rogue employees" and that they hire an outside company to train employees. "I can show you forty-five instances where we haven't sold to minors in the last twelve years," testified Mr. Richmond.

ATC Attorney Olson asked Mr. Richmond whether the training was conducted by ATC. Mr. Richmond stated, "Yes." ATC Attorney Olson then asked where that training was conducted. Mr. Richmond stated that one training was conducted in Rogers, Arkansas and one training was conducted in Fort Smith, Arkansas. ATC Attorney Olson also asked Mr. Richmond if the store location was a member of the ATC Certified Training Program. Mr. Richmond testified that the store was not in such a program.

Board Member Dr. Shabbir Dharamsey asked ATC Staff if the Staff reviewed the leniency request and based on the review, the requested notice and offer of statement is "based on what we have done in the past - precedent." ATC Attorney Olson agreed and noted that the offer is fair, reasonable and consistent with how ATC has treated other similar permittees - based on the facts and circumstances present. Board Member David Hendrix Jr asked Staff about the specific date of the second violation. ATC Attorney Olson stated, "June 14, 2022."

After hearing testimony, and in light of the accepted Exhibits, a decision was made to levy the recommended fine by the director of \$700.00, 5-day permit suspension, and mandatory Merchant Education Training for all store employees within six (6) months. A motion was made and approved by the board with six (6) yes votes and two (2) absent. Chairman Gary Proffitt requested a motion. A motion was made by Dr. Shabbir Dharamsey and seconded by Mr. Sam Stathakis to approve and affirm the Directors initial recommendation contained in the Notice and Offer of Settlement. Motion passed with six (6) yes votes and zero (0) opposing votes.

## **FULL HEARING**

**CASE NO. 2022-01909  
IN THE MATTER OF  
CAFE HAVANA INC.  
dba HAVANA NIGHTS  
JIMMY C. MORRIS, JR.**

7309 KANIS ROAD  
LITTLE ROCK, ARKANSAS 72204

**Violation:** Possession of Untaxed Tobacco Products (2ND OFFENSE) in violation of A.C.A. § 26-57-245.

Mr. Jason Johnson, an Attorney, served as Hearing Officer. Ms. Jennifer Barnett served as the Court Reporter. Mr. JIMMY C. MORRIS, JR. appeared before the Board as the representative of Cafe Havana Inc. dba Havana Nights, *pro se* (Mr. Morris is an Attorney). ATC Attorney, William R. Olson, appeared on behalf of Arkansas Tobacco Control ("ATC").

ATC Attorney Will Olson stated that the parties have discussed and reached an agreement. Mr. Jimmy C. Morris, Jr. will accept the original Notice and Offer of Settlement. Therefore, there will be no need for a hearing – the Hearing will be waived.

Mr. Jimmy C. Morris, Jr. stated that he is waiving today's hearing and pursuing negotiated settlement.

### **WHOLESALE PERMIT APPLICATIONS**

Chairman Proffitt presented two (2) new Wholesale Tobacco and Vapor Product Permit Applications to the Board for approval.

- **KARMA WHOLESALE, LLC. - EL DORADO, AR**
- **WHOLESALE GURU, INC. dba MK VAPE WHOLESALE - DALLAS, TX**
  - A motion was made by Dr. Shabbir Dharamsey to approve the two (2) Wholesale Applicants listed above and it was seconded by Dr. Brad Mayfield. Motion passed with six (6) yes votes and zero (0) opposing votes.

### **NEW NON-WHOLESALE PERMITS ISSUED**

- Director Greg Sled presented the list of forty-nine (49) new permits (those permits other than wholesale permits) issued from October 25, 2022 through November 25, 2022, to the Board for review and approval.
  - A motion was made to accept and approve the list of forty-nine (49) new permits issued by Mr. Sam Stathakis and seconded by Mr. David Hendrix, Jr. The motion passed with six (6) yes votes and zero (0) opposing votes.

### **DEFAULT JUDGMENTS**

- Director Greg Sled presented the Default Judgment list for December 1, 2022 Board Meeting to the Board to review and approve.



- A motion was made to approve the Default Judgments by Mr. David Hendrix, JR. and was seconded by Dr. Shabbir Dharamsey to approve. The motion passed with six (6) yes votes and zero (0) opposing votes.

### ACCEPTED OFFERS OF SETTLEMENT

- Director Greg Sled presented the Accepted Offers of Settlement for December 1, 2022 Board Meeting to the Board to review and approve.
  - A motion was made to approve the Accepted Offers of Settlement by Dr. Shabbir Dharamsey and seconded by Dr. Brad Mayfield to approve. The motion passed with six (6) yes votes.

### ENFORCEMENT ACTIVITY

- Director Sled introduced two (2) new agents: Tony Overstreet and Jonathon Reid Hudgens. Director Sled reported for following results for compliance checks.

September - 59 / 540 = 10.93 %

October - 50 / 553 = 9.04 %

November - 42 / 519 = 8.11 %

FY 2023 - 305 / 3195 = 9.55 %

Results for Inspections for the month of November, with 17 out of 46 inspections totaled 46 violations = 36.96 %.

- Director Sled also updated the Board on the upcoming administrative hearings scheduled for January.
- Upcoming Merchant Training will be held on December 6, 2022 in Harrison and on December 13, 2022 in Mountain Home.

### FDA ACTIVITY

- Deputy Director Ray Owens reported for the Month of November 2022, FDA Division Agents completed 177 inspections with nineteen (19) potential violations being reported.
  - FDA Routine Inspections are minor checks where no previous violations exist or are old enough that a fresh inspection has been randomly generated.
- FDA Compliance Follow-Up ("CFU") Inspections for November resulted in fifty-one (51) CFU Inspections with four (1) potential violations.
  - FDA CFU Inspections are checks with and without minors at locations where previous violations have occurred.

- 168 Total inspections were performed with twenty (20) potential violations reported resulting in 11.9 % violation rate.

#### LEGAL UPDATE

- ATC Attorney Will Olson reported no new legal updates for this month.

#### OPEN FORUM

- Chairman Gary Proffitt asked if there were any questions or comments from the Board members. There were no questions or comments made at that time.
- Chairman Gary Proffitt asked those in the public audience if there were any questions or comments. There were no questions or comments made at that time.

#### ADJOURNMENT

In closing, Chairman Gary Proffitt stated that the next ATC Board meeting is scheduled for January 5, 2023. A motion was made by Dr. Shabbir Dharamsey to adjourn, and it was seconded by Dr. Brad Mayfield. It was approved with six (6) yes votes. The meeting was adjourned.

**Minutes prepared by:**

Sharee Devore

Sharee Devore

**Dated:** December 20, 2022