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AGENCY NAME: Arkansas Tobacco Control

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<u>March 2, 2023 Board minutes</u>	<u>4-28-23</u>	<u>1</u>	<u>Y</u>	<u>Y</u>	<u>0</u>
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BOARD MEETING MINUTES MARCH 2, 2023

The Arkansas Tobacco Control Board met on Thursday, March 2, 2023, 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 seven (7) Board members present.

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

CALL TO ORDER.

- Chairman Gary Proffitt called the ATC Board meeting to order and opened the meeting welcoming the guests and staff.
- There were two hearings set for today's Board Meeting. As a result, a hearing officer, Mr. Charles Moulton, and court reporter, Ms. Nicole Neal, were present.

BOARD MEETING MINUTES

Chairman Gary Proffitt requested a motion to approve the board meeting minutes from January 5, 2023. A motion was made by Mr. Sam Stathakis and seconded by Dr. Brad Mayfield to approve the January 5, 2023, minutes. It passed with seven (7) yes votes and zero (0) opposing votes.

WHOLESALE PERMIT APPLICATIONS

Chairman Proffitt presented five (5) new Wholesale Tobacco and Vapor product Permit applications to the Board for approval.

- ❖ United Novelty Partners, LLC. - Memphis, TN
 - ❖ Xelix Distribution, INC. - Republic, MO
 - ❖ Xelix Distribution, INC. - Fort Worth, TX
 - ❖ Xelix Distribution, INC. - Brookhaven, MS
 - ❖ La Vapor Wholesale, INC. - Houston, TX
- A motion was made by Dr. Brad Mayfield to approve all five (5) wholesale applications and seconded by Mr. Sam Stathakis. The motion passed with seven (7) yes votes and zero (0) opposing votes.

NEW RETAIL PERMITS ISSUED

- Director Greg Sled requested the Board members to review and approve the list of one hundred and seventeen (117) new permits (those permits other than wholesale permits) issued from January 1, 2023 through February 28, 2023.
 - A motion was made to accept and approve the list of one hundred and seventeen (117) new permits issued by Mr. Brent Summerhill and seconded by Dr. Shabbir Dharamsey. The motion passed with seven (7) yes votes and zero (0) opposing votes.

DEFAULT JUDGMENTS

- Director Greg Sled presented the January 2023 and February 2023 default judgement list to the Board to review and approve.
 - A motion was made to approve the Default Judgments by Dr. Shabbir Dharamsey and was seconded by Mr. David Hendrix, Jr. to approve. The motion passed with seven (7) yes votes and zero (0) opposing votes.

ACCEPTED OFFERS OF SETTLEMENT

- Director Greg Sled requested the Board members to review and approve the list of Accepted Offers of Settlement for January 2023 and February 2023.
 - A motion was made to accept the Accepted Offers of Settlement by Mr. Brent Summerhill and seconded by Mr. Sam Stathakis. The motion passed with seven (7) yes votes and zero (0) opposing votes.

ENFORCEMENT ACTIVITY

- Director Sled reported for following results for compliance checks.

December - 34 / 464 = 7.33 %

January - 46 / 528 = 8.71 %

February - 58 / 530 = 10.94 %

FY 2023 - 438 / 4714 = 9.29 %

Results for Inspections for the month of January 2023 and February 2023, with 37 out of 99 inspections totaled 87 violations = 37.37%.

FDA ACTIVITY

Deputy Director Ray Owens reported for the month of January 2023 FDA Agents completed 189 inspections with eight (8) potential violations and February 2023 FDA Agents completed 371 inspections with twenty-two (22) potential violations. FDA January 2023 violation rate was 4.2% and February 2023 violation rate was 5.9%.

LEGAL UPDATE

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

LENIENCY HEARINGS

- ❖ Case No. 2022-13536
GPM SOUTHEAST, LLC. dba CASH'S 4468, Permit No. 00221-02
Arie Kotler
111 East Church Street
Warren, Arkansas 71671

Violation: Selling Tobacco Products to Minors A.C.A. § 26-57-266 (SECOND OFFENSE)

Mr. Charlie Moulton, Attorney, served as the Hearing Officer. Ms. Nicole Neal served as the Court Reporter. Mr. JAMES STOKES, Regional Manager, GPM Southeast, LLC., appeared and offered testimony as the representative of GPM SOUTHEAST, LLC dba CASH'S # 4468 (collectively, "Petitioner"). ATC Attorney, William R. Olson, appeared on behalf of Arkansas Tobacco Control ("ATC").

The Hearing Officer admitted **ATC's Exhibit 1** into evidence. No party objected to the admission of **ATC's Exhibit 1**. **ATC's Exhibit 1** 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 the Hearing, Petitioner and ATC stipulated to written facts and law. Such written Stipulations of Facts and Law were accepted by the Hearing Officer into evidence as **ATC's Exhibit 2**. The Hearing Officer also admitted **Petitioner's Exhibit 1** into evidence, upon the request of Petitioner's authorized representative, Mr. James Stokes, Regional Manager. No party objected to the admission of **Petitioner's Exhibit 1**. Petitioner's Exhibit 1 included, but was not limited to, a packet containing internal training documents and employee server awareness form documentation. The Board considered **ATC's Exhibit 1, ATC's Exhibit 2, and Petitioner's Exhibit 1** as evidence.

ATC Attorney William R. Olson read admitted Stipulations of Fact and Law into the record. ATC Attorney Olson also made legal arguments regarding the application of law in this matter. Mr. James Stokes testified on behalf of himself and GPM Southeast, LLC. dba Cash's # 4468 regarding Petitioner's request for leniency from the ATC Board. Mr. Stokes also presented testimony and documentation pertaining to company sales-to-minors prevention training.

In light of the evidence and testimony submitted before the Board, a motion was made by Dr. Shabbir Dharamsey and seconded by Mr. Brent Summerhill to approve the \$350.00 civil penalty and one (1) day permit suspension for the violation of Ark Code Ann. § 26-57-227(a)(1)(A) – SECOND OFFENSE. Motion passed with seven (7) yes votes and zero (0) opposing votes.

❖ Case No. 2022-14456

GPM SOUTHEAST, LLC. dba E-Z MART # 4443, Permit No. 07370-03

Arie Kotler

1007 Military Road

Benton, Arkansas 72015

Violations:

- (1) Selling Tobacco Products to Minors A.C.A. § 26-57-266 (SECOND OFFENSE)
- (2) No Server Awareness Form on File for an Employee Selling Tobacco Products in violation of ATC Rule 4.1

Mr. Charlie Moulton, an Attorney, served as Hearing Officer. Ms. Nicole Neal served as Court Reporter. Mr. JAMES STOKES, Regional Manager, GPM SOUTHEAST, LLC dba E-Z MART # 4443, appeared and offered testimony as the representative of GPM SOUTHEAST, LLC dba E-Z MART # 4443 (collectively, "Petitioner"). ATC Attorney, William R. Olson, appeared on behalf of Arkansas Tobacco Control ("ATC").

The Hearing Officer admitted **ATC's Exhibit 1** into evidence. No party objected to the admission of **ATC's Exhibit 1**. **ATC's Exhibit 1** 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 the Hearing, Petitioner and ATC stipulated to written facts and law. Such written Stipulations of Facts and Law were accepted by the Hearing Officer into evidence as **ATC's Exhibit 2**. The Hearing Officer also admitted **Petitioner's Exhibit 1** into evidence, upon the request of Petitioner's authorized representative, Mr. James Stokes, Regional Manager. No party objected to the admission of **Petitioner's Exhibit 1**. **Petitioner's Exhibit 1** included, but was not limited to, a packet containing internal training documents. The Board considered **ATC's Exhibit 1, ATC's Exhibit 2, and Petitioner's Exhibit 1** as evidence.

ATC Attorney William R. Olson read admitted Stipulations of Fact and Law into the record. ATC Attorney Olson also made legal arguments regarding the application of law in this matter. Mr. James Stokes testified on behalf of himself and GPM Southeast, LLC. dba E-Z Mart # 4443 regarding Petitioner's request for leniency from the ATC Board. Mr. Stokes also presented testimony and documentation pertaining to company sales-to-minors prevention training.

In light of the evidence and testimony submitted before the Board, a motion was made by Dr. Shabbir Dharamsey and seconded by Mr. David Hendrix, Jr. to approve the \$350.00 civil penalty and one (1) day permit suspension for the violation of Ark Code Ann. § 26-57-

227(a)(1)(A) – SECOND OFFENSE and a Warning for the violation of ATC Rule 4.1. Motion passed with seven (7) yes votes and zero (0) opposing votes.

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 April 6, 2023. A motion was made by Dr. Shabbir Dharamsey and seconded by Mr. Sam Stathakis to adjourn. It was approved with seven (7) yes votes and zero (0) opposing votes. The meeting was adjourned.

Minutes prepared by:

Sharee Devore

Sharee Devore

Dated: April 28, 2023