

February 28, 2022

VIA EFILING ONLY

Shari Moore
City Clerk
City of St. Paul
310 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102
cityclerk@ci.stpaul.mn.us

Re: *In the Matter of the Cigarette/Tobacco - Product Shop License held by Reemo Corp. d/b/a Rice Street Tobacco for the Premises Located at 1196 Rice Street in Saint Paul*
OAH 82-6020-37973

Dear City Clerk Moore:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** in the above-entitled matter. The official record, along with a copy of the recording of the hearing, is also enclosed. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact me at (651) 361-7874, michelle.severson@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



MICHELLE SEVERSON
Legal Assistant

Enclosure

cc: Docket Coordinator
Stephen Earnest
Bilal Alsadi

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of the Cigarette/Tobacco -
Product Shop License held by Reemo
Corp. d/b/a Rice Street Tobacco for the
Premises Located at 1196 Rice Street in
Saint Paul

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judge Barbara Case for a hearing on February 16, 2022. The record closed at the close of the hearing.

Stephen Earnest, Assistant City Attorney, appeared on behalf of the City of St. Paul (Department). Bilal Alsadi, owner of Rice Street Tobacco, appeared on behalf of Reemo Corp. (Appellant).

STATEMENT OF THE ISSUES

Does the City have reasonable cause to take adverse action against Appellant's tobacco license ID# 20180001947 in the form of a \$500 matrix penalty?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge recommends that the \$500 fine imposed on Licensee's tobacco license be affirmed.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Bilal Alsadi is the owner of Rice Street Tobacco¹ which is located at 1196 Rice Street, Saint Paul. Mr. Alsadi carries over one thousand products in his store. His store has a licensing history of only one other adverse action. That previous adverse action was for tobacco on January 17, 2019. Therefore, the event addressed in this report is deemed a "First Violation."²

2. On August 11th, 2021, Revenue Tax Specialists (RTSs) from the Minnesota Department of Revenue (MDR), Jody True and Steve Johnson, conducted a

¹ City's Exhibit (Ex.) 12-1 (Revenue Tax Inspectors' Report, Aug. 11, 2021). The Revenue Tax Inspectors' Report states that the correct name of the business is Premier Wholesale Limited Liability Co.

² Testimony (Test.) of Bilal Alsadi; City's Ex. 4-2 (Licensing history); City's Ex. 2 (Request Information).

random contraband inspection at Rice Street Tobacco. They discovered five unstamped packages of filtered little cigars.³ Because filtered little cigars are treated like cigarettes for purposes of taxation and are required to have tax stamps affixed to their packages. The RTSs seized the five packages as contraband pursuant to section 297F.21(a) of the Minnesota Statutes.⁴

3. Appellant purchased this product from Winner Tobacco Wholesale, Inc. located at 675 Stinson Boulevard, Suite 100 in Minneapolis.⁵ The invoice for the unstamped tobacco product lists the product name as Djarum Black and the category as “cigarettes.”⁶ The invoice further shows that there were ten packages of the product purchased by Appellant such that by the time the RTSs seized the five remaining packages, five had been sold.⁷

4. Appellant does not dispute that the five unstamped packages were for sale in his shop.⁸

5. The City provided notice of the violation and recommended penalty by letter dated December 3, 2021.⁹

6. While neither party offered a copy of Appellant’s appeal of the notice, it is reasonable to presume Appellant appealed because the City requested that a hearing officer be appointed to hear the matter.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The City and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.55, 340A.415 (2020), and Saint Paul Legislative Code §§ 310.05, .06.

2. The City has complied with all relevant procedural requirements of ordinance and rule.

3. Minn. Stat. § 297F.21(a) (2020) provides that cigarette packages which do not have stamps affixed to them are contraband.

4. Saint Paul Legislative Code § 310.06 (b)(6)(a) provides that when a licensee has violated any provision of the Code or of any statute, ordinance, or

³ City’s Exs. 10 and 11 (Photographs of unstamped packages).

⁴ Test. of Steve Johnson; City’s Ex. 12-1 (Retail Inspection Log of Aug. 11, 2021).

⁵ Appellant’s Ex. 1 (Invoice, Feb. 24, 2020).

⁶ *Id.*

⁷ *Id.*

⁸ Test. of B. Alsadi.

⁹ City’s Ex. 1-2 (Notice, Dec. 3, 2021).

regulation reasonably related to the licensed activity, the City may take adverse action against the license.

5. Code § 310.05(m) sets forth hearing procedures, provides a matrix of penalties for first, second, third, and fourth appearances before the City Council, and provides a matrix of penalties for first, second, third, and fourth license violations. Part (m)(1) relates to “violations of conditions placed on the license”, the matrix penalty for which is a \$500 fine.

6. Code § 310.05(m) provides that the matrix penalties are presumed to be appropriate for every case but also notes that the City Council may deviate in an individual case where the council finds substantial and compelling reasons making it more appropriate to do so. If the Council deviates, it must provide written reasons why the penalty selected was more appropriate.

7. The City has complied with the notice requirements of Code § 310.05(b).

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the \$500 fine imposed on Licensee’s tobacco license be affirmed.

Dated: February 28, 2022



BARBARA J. CASE
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared.

NOTICE

This report is a recommendation, not a final decision. The Saint Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions of Law, and Recommendation issued by the Administrative Law Judge. Pursuant to Saint Paul Legislative Code § 310.05, the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. The parties should contact Shari Moore, City Clerk, City of Saint Paul, 290 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, to find out the procedure for filing exceptions and presenting argument.

MEMORANDUM

There were three witnesses at the hearing in this matter and all testified in a straightforward and credible manner. In fact, there is no dispute that the shop was in possession of five packages of small cigars which did not contain a tax stamp. Mr. Alsadi did not dispute the facts, but rather, explained that the fine seemed disproportionate to the violation given the number of items he sells, the fact that he relied on his wholesaler to assure stamps are affixed and that the violation was inadvertent rather than intentional. He also explained that his primary concern is with the potential future negative consequences for his license.¹⁰

On August 11th, 2021, the Minnesota Department of Revenue (MDR) conducted a random contraband inspection at Rice Street Tobacco, during which MDR discovered five unstamped packages of filtered little cigars. Because filtered little cigars are treated like cigarettes for purposes of taxation and are, therefore, required to have tax stamps affixed to their packages, MDR seized the five packages as contraband pursuant to section 297F.21 of the Minnesota Statutes. The licensee received notice of that seizure and an opportunity to challenge it but did not do so.¹¹

The City's Department of Safety and Inspections (Department) subsequently received notice of the seizure and the licensee's failure to challenge it, which it considered to be a final determination that the licensee was in possession of contraband. Accordingly, because possession of contraband is a violation of Minnesota Statutes sections 297F.20 and 297F.21, the Department requested adverse action against the licensee's cigarette/tobacco license. Under section 310.05(m) of the Saint Paul Legislative Code, the presumptive penalty for a first appearance for violating a state statute is a \$500 fine.

Given that this violation is considered a first violation, the straightforward manner of Mr. Alsadi's admissions, and his explanations about the wholesaler, the Administrative Law Judge found him believable. Moreover, the Administrative Law

¹⁰ Test. of B. Alsadi.

¹¹ Test. of S. Johnson.

Judge is sympathetic to the frustrations inherent in running a small business. However, the unstamped packages were in his store long enough for half of them to be sold. No basis for departing from the presumptive penalty was established. The Administrative Law Judge recommends that Mr. Alsadi make his employees responsible to look for, and bring to his attention, any tobacco products that do not meet licensing requirements. This task could be done when the products are placed for display and at the time of sale with minimal burden.

The City has met its burden to show that, based on the licensee's possession of five unstamped packages of filtered little cigars, a \$500 fine may be imposed against the cigarette/tobacco license held by the licensee.

B. J. C.