



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

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P.O. Box 64620
St. Paul, Minnesota 55164-0620

July 14, 2015

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City of St. Paul
400 City Hall and
Courthouse
15 West Kellogg Blvd
Saint Paul, MN 55102

Re: *In the Matter of Tom Super USA LLC d/b/a Super USA*
OAH 5-6020-32579

Dear Parties:

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, with the exception of the recording of the hearing, is also enclosed. If you would like a copy of the recording, please contact the Office of Administrative Hearings in writing, by telephone at (651) 361-7881, or by e-mail at rachel.youness@state.mn.us. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact my legal assistant Rachel Youness at (651) 361-7881 or rachel.youness@state.mn.us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Mortenson", with a long, sweeping underline.

JIM MORTENSON
Administrative Law Judge

JRM:ry
Enclosure
cc: Geoffrey S. Karls
Towfik Hassen

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CITY ATTORNEY

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

In the Matter of all licenses held by Tom Super, LLC d/b/a Super USA for the premises located at 976 – 7th Street East in St. Paul

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

License ID #20090000182

This matter came on for hearing before Administrative Law Judge Jim Mortenson on July 13, 2015, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The record closed the same day.

Geoffrey Karls, Assistant St. Paul City Attorney, appeared for the city of St. Paul (City). Towfik Hassen, President of Super USA, appeared on behalf of the Licensee (Licensee).

STATEMENT OF ISSUE

Whether Licensee violated St. Paul Legislative Code § 324.07 and should be assessed a \$2,000 matrix penalty and a ten (10) day suspension of all licenses?

RESOLUTION

Prior to the start of the hearing the parties reached an agreement on resolution of this matter. The parties agreed the alleged facts asserted in the Notice of Administrative Hearing, dated June 3, 2015, would constitute the findings of fact, and that the recommended penalty for the licensing violation would be a \$1,000 penalty and a five (5) day suspension of Licensee's tobacco license. The parties specifically requested the Administrative Law Judge issue a report with Findings of Fact, Conclusions of Law, and a Recommendation based on the agreement of the parties.

FINDINGS OF FACT¹

1. A Notice of Violation was sent to the Licensee on April 27, 2015, alleging the sale of single cigarettes took place at the licensed premises on April 22, 2015 (CN #15-080-519). The licensee admitted the violation and paid the \$500 matrix penalty on May 11, 2015.

¹ All findings of fact are from the Notice of Administrative Hearing, as agreed to by the parties.

2. On May 5, 2015, St. Paul Police came to 976-7th Street East to investigate numerous reports regarding the illegal sale of individual cigarettes (CN #15-090-625). The officer met with a Confidential Reliable Informant (CRI), who was given \$2.00 and directed to purchase individual cigarettes from an employee inside the store.

3. The officers watched as the CRI went into the store and returned a short time later. The CRI then produced three (3) Newport brand individual cigarettes which he/she had purchased with the \$2.00 from an employee inside the store. According to the CRI, he/she handed the money directly to the employee and received the unpackaged cigarettes from that same employee.

4. On May 28, 2015, two weeks after the Notice regarding the incident above was sent to the licensee, St. Paul Police sent a Confidential Reliable Informant (CRI) into the Super USA located at 976-7th Street East with an amount of money and was told to see if he or she could purchase single cigarettes from an employee (CN #15-108-639).

5. The CRI was dropped off and told to walk into the store, which was being watched by police the entire time. The CRI walked into the store and exited a short time later. The CRI handed the officers a single Newport cigarette he or she had purchased from an employee behind the counter.

6. The CRI stated that while he or she was inside, there was another customer in the store. When the CRI asked if he or she could purchase a couple single cigarettes, the employee asked "don't you have to use the bathroom?" The CRI stated he or she went to the bathroom for a short period of time and when he or she returned the customer was gone. The CRI stated he or she went to the counter and asked if he or she could purchase three (3) Newport cigarettes for two dollars (\$2.00). The employee shook his head and said, "we don't sell single cigarettes anymore." Then the employee handed CRI one (1) single Newport cigarette from behind the counter and said it would cost one dollar (\$1.00). The CRI handed the employee the \$1.00 and left the store.

From the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The city of St. Paul and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to St. Paul Legislative Code §§ 310.05 and 310.06.

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

3. St. Paul Legislative Code § 324.07(a) provides: "No person shall sell a cigarette outside its original packaging containing health warnings satisfying the

requirements of federal law. No cigarettes shall be sold in packages of fewer than twenty (20) cigarettes.”

4. Code section 310.05 sets forth hearing procedures and, in section (m), provides a matrix of penalties for first, second, third and fourth license violations. The matrix penalties are presumed to be appropriate for every case, but the code 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. The City may impose penalties different than those described in the matrix when substantial and compelling reasons make it more appropriate to do so.²

5. The parties have stipulated to the Findings of Fact and have agreed that the recommended penalties below are appropriate to resolve this matter. The Administrative Law Judge agrees.

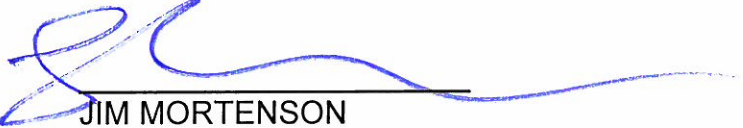
Based upon the agreement of the parties the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that

- 1) The city of St. Paul **ASSESS** Licensee a \$1,000.00 matrix penalty; and
- 2) **SUSPEND** Licensee’s tobacco license for five (5) days.

Dated: July 14, 2015


JIM MORTENSON
Administrative Law Judge

Digitally recorded; no transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The St. Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions of Law, and Recommendation. Pursuant to St. Paul Legislative Code § 310.05 (c-1), 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. Parties should contact Shari Moore, City Clerk, City of St. Paul, 170 City Hall, 15 W. Kellogg Blvd., St. Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

² St. Paul Legislative Code § 310.05(m).

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MN 55164-0620

CERTIFICATE OF SERVICE

In the Matter of Tom Super USA LLC d/b/a Super USA	OAH Docket No.: 5-6020-32579
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Rachel Youness, certifies that on July 14, 2015, she served the true and correct **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** by courier service or by placing it in the United States mail with postage prepaid, addressed to the following individuals:

City of St. Paul
400 City Hall and Courthouse
15 West Kellogg Blvd
Saint Paul, MN 55102

Geoffrey S. Karls
St. Paul City Attorney's Office
Assistant City Attorney
400 City Hall & Courthouse
15 W Kellogg Blvd
Saint Paul, MN 55102

Towfik Hassen
976 Seventh St E
Saint Paul, MN 55106