

August 15, 2023

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 Tobacco Shop License Held by Amira Grocery d/b/a
Winnipeg Grocery for the Premises Located at 864 Rice Street in
Saint Paul***
OAH 82-6020-39197

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
Therese Skarda
Douglas E. Nepp

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

In the Matter of Tobacco Shop License
Held by Amira Grocery d/b/a Winnipeg
Grocery for the Premises Located at
864 Rice Street in Saint Paul

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

This matter came before Administrative Law Judge Barbara J. Case for a hearing on July 20, 2023, at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed on July 28, 2023.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). Douglas E. Nepp, Nepp & Hackert, LLC, appeared on behalf of Amira Grocery, Inc. d/b/a Winnipeg Grocery, Inc. (Licensee).

STATEMENT OF THE ISSUES

1. Has the City established that Licensee violated St. Paul Legislative Code § 324.07(j) by selling, offering for sale, or otherwise distributing flavored tobacco products?¹
2. If so, may Licensee's Tobacco Shop License be suspended for 10 days pursuant to St. Paul Legislative Code § 324.10(b)(2)?

SUMMARY OF RECOMMENDATION

The City has established by a preponderance of the evidence that Licensee offered flavored tobacco products for sale in violation of the St. Paul Legislative Code. The Administrative Law Judge respectfully recommends that the City Council impose the presumptive penalty against Licensee's Tobacco Shop License.

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

¹ Notice of Violation And Request For Imposition of a 10-Day Suspension Of Your License (Notice) (Mar. 16, 2023).

FINDINGS OF FACT

I. Background and Inspection

1. Amira Grocery, Inc. d/b/a Winnipeg Grocery, Inc., located at 864 Rice Street in Saint Paul, Minnesota (Licensed Premises) holds a Tobacco Shop License (License) permitting it to sell tobacco products.²

2. Mohamed Shaaban Sultan is the Licensee's owner and responsible party for the License held at the Licensed Premises.³ He has been the owner of the Licensed Premises for approximately three years and prior to that operated a delicatessen (deli) located at the rear of the Licensed Premises. In the past three years Licensee has had no tobacco related violations.⁴

3. The Licensed Premises has 3600 square feet of interior space and has one public entrance.⁵ The front area of the store contains shelves of groceries and a cashier stand area. The cashier stand has displays of merchandise to the sides and behind the cash register, including tobacco products.⁶ The area is open at one end.⁷ At the rear of the store is the deli) which Licensee sub-leased for \$1,500 per month to Melvin Galloway.⁸ By December of 2023, Mr. Galloway owed Licensee \$7,500 in back rent.⁹ On approximately May 13, 2023, Mr. Galloway gave Licensee a check for \$7,500. The check bounced and by the end of May Licensee had terminated the lease agreement.¹⁰

4. On December 31, 2023, the City's Department of Safety and Inspections (Department) received a complaint about the Licensed Premises.¹¹ The complaint details are "Tobacco: selling flavored tobacco products and Newport Menthol without Tax Stamps from a bag behind the counter."¹²

5. On February 2, 2023, Department Inspector Allan Vang went to the Licensed Premises to perform an inspection in response to the complaint about the sale of prohibited flavored tobacco products.¹³

6. Upon arrival, Inspector Vang introduced himself to the Licensee's owner and responsible party, Mohamed Sultan. Also present was Inspector Tom Piskor from

² Stipulated Fact (Stip.) 1, *citing* Exhibits (Exs.) 12-1 and 6-1.

³ Stip. 2, *citing* Ex. 12-1.

⁴ Test. of Mohamed Shaaban Sultan; Ex. 10.

⁵ Test. of M. Sultan.

⁶ Ex. 12; Ex. 5.

⁷ Stip 1.

⁸ Test. of M. Sultan; Ex. 101; Ex. 10-3.

⁹ Ex. 101; Test. of M. Sultan.

¹⁰ Test. of M. Sultan.

¹¹ Ex. 2.

¹² Ex. 2.

¹³ Ex. 1.

the State of Minnesota Department of Revenue (MDR) who had arrived earlier and was also inspecting the premises. Inspector Piskor had found prohibited flavored products in two plastic bags on the floor of the cashier stand area as alleged in the complaint. Inspector Piskor had laid out all the prohibited flavored products that he had found in the two bags along the cash register area counter.¹⁴

The following items comprise what Inspector Piskor found behind the counter in the two black bags:

- a. 8 pack/20 Newport Box 100 Newport Box King
- b. 7 pack/20 Newport Box King Size
- c. 1 Single Pen Loon Max 2000 Puff Ice Pineapple
- d. 1 Single Cigar Backwoods Honey Cigarillo Single
- e. 3 Single Cigar Backwoods Russian Cream Cigar Single
- f. 4 Single Cigar Backwoods Stout Single
- g. 1 5-Pack Backwoods Black Russian - 5 cigars
- h. 1 5-Pack Backwoods Honey Bourbon - 5 cigars
- i. 1 5-Pack Backwoods Banana - 5 cigars
- j. 4 Package Franta Leaf Master Cream Natural Cigar Wrappers
- k. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Java Fusion Deluxe
- l. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Honey Fusion Golden
- m. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Sweet Fusion Red
- n. 4 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - OG Fusion
- o. 1 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Blue Fusion Cream
- p. 4 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Blue Fusion Burst
- q. 3 2-Pack Dutch Natural Leaf Cigarillos 2 for \$0.99 - Gold Fusion¹⁵

7. The prohibited products did not have Minnesota tax stamps affixed to them and some had tax stamps of unknown origin that had been partially scratched off.¹⁶

8. Mr. Sultan told the inspectors that the prohibited products belonged to Mr. Galloway.¹⁷ Inspector Vang told Mr. Sultan that the prohibited products needed to be removed from behind the counter and stored out of sight. Inspector Piskor intervened and explained that, because the products were not on Licensee's tobacco product invoice, he was seizing the products.¹⁸

9. Mr. Galloway claims that he was the owner of the prohibited products and that Licensee had nothing to do with them. Mr. Galloway claims that he walked into the Licensed Premises on February 3, 2023, with the two bags of prohibited products, stopped to talk to Licensee about the past due rent and left the two plastic bags behind the counter of the store's cashier area. He walked to the deli area to have his employee

¹⁴ Exs. 1 and 3.

¹⁵ Exs. 1, 3, 4; Stip. 23.

¹⁶ Ex. 4.

¹⁷ Ex. 3-1; Test of M. Sultan.

¹⁸ Ex. 3-1.

make him a sandwich. At that same moment the Inspectors came into the Licensed Premises and searched the two black bags, finding the prohibited products.¹⁹ Mr. Galloway has asked the Minnesota Department of Revenue to return the products to him.²⁰

II. Procedural Facts

10. On March 16, 2023, the City issued a Notice of Violation and For Imposition of a 10-Day License Suspension (Notice) to Licensee notifying Licensee that it had violated St. Paul Legislative Code § 324.07(j) prohibiting a licensee from selling, offering for sale, or otherwise distributing any flavored tobacco products.²¹ The Notice of Revocation advised Licensee that it could contest the proposed adverse action and request a hearing.²²

11. By letter dated March 24, 2023, Licensee notified the City that it disputed the facts, contested the proposed adverse action, and requested a hearing.²³

12. The parties stipulated to some facts pertaining to this matter.²⁴ The parties stipulated that “[t]he issues in dispute relate to whether the Licensee is responsible for the prohibited flavored tobacco products found by agents from the MDR and the Department’s Inspector.”²⁵

13. Any Conclusion of Law more properly considered to be a Finding of Fact is incorporated herein.

14. Any portion of the Memorandum or fact contained therein that should be considered as a Finding of Fact is adopted as such.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the City Council have authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c), Minn. Stat. § 14.55 (2022).

2. The hearing in this matter was conducted in accordance with St. Paul Legislative Code § 310.05 and the contested case procedures of Minn. Stat. §§ 14.57-.62 (2022).

¹⁹ Ex. 102.

²⁰ Ex. 102.

²¹ Ex. 1-1.

²² Exs. 1-2, 1-3.

²³ Ex. 10.

²⁴ Ex. 15.

²⁵ Stip. 42.

3. In each case where adverse action is or will be considered by the City Council, the licensee shall have been notified in writing that adverse action may be taken against the license, and that the licensee is entitled to a hearing before action is taken by the Council. The notice shall state the issues involved or grounds upon which the adverse action may be sought or based.²⁶

4. The City provided proper notice of the hearing and fulfilled all procedural requirements of rule and law.

5. The City must show by a preponderance of the evidence that Licensee committed the alleged violation.²⁷

6. Under St. Paul Legislative Code § 324.07(j), “no person may sell, offer for sale, or otherwise distribute any flavored tobacco products,” unless a specific exception identified in section 324.07(l) applies. No exception found in St. Paul Legislative Code § 324.07(l) applies here. Therefore, Licensee was prohibited from selling, offering for sale, or distributing flavored tobacco products.

7. Under St. Paul Legislative Code § 324.03(10), “sale” means and includes, “any transfer, conditional or otherwise, of title or possession.”

8. Under St. Paul Legislative Code § 324.10(b)(2), the presumptive penalty for a first violation for the “[d]isplay, possession or multiple incidents of sales of; single cigarettes, menthol tobacco products or flavored tobacco products” is a 10-day suspension of the license.

9. The City has established that Licensee violated St. Paul Legislative Code § 324.07(j) by offering prohibited flavored tobacco products for sale.

10. Licensee has not established any basis to depart from the presumptive penalty for its violation.

11. Any Finding of Fact more properly deemed a Conclusion of Law is incorporated herein.

12. Any portion of the accompanying Memorandum that is more properly considered to be a conclusion of law is adopted herein.

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

²⁶ St. Paul Legislative Code § 310.05(b).

²⁷ Minn. R. 1400.7300, subp. 5 (2023).

RECOMMENDATION

The City Council should find Licensee violated St. Paul Legislative Code § 324.07(j) and impose a 10-day suspension of Licensee's Tobacco Shop License.

Dated: August 15, 2023


BARBARA J. CASE
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Saint 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 Saint 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 the St. Paul City Clerk, 310 City Hall, 15 W. Kellogg Blvd., Saint Paul, MN 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

The record establishes that Licensee offered flavored tobacco products for sale in violation of St. Paul Legislative Code § 324.07(j). The prohibited items were flavored products, with packaging identifying flavors such as Honey, Dark Stout, Max Pineapple, Cream, and Dutch Sweet Fusion Red, as well as mentholated Newport cigarettes. There was no dispute at hearing that the quantity of flavored products found behind the Licensed Premise's cash register area was too much for personal use.

Licensee argues that the products were not his, but instead belonged to his sublessee, Mr. Galloway. At the time of the inspection, Mr. Galloway rented a deli inside the Licensed Premises and was significantly in arrears on the rent.

Licensee argues that a sub-lessee's actions cannot be imputed to the Licensee. The City argues that such an exception would mean that all sorts of illegal activities could be carried out inside licensed premises with impunity simply by subleasing an area in which illegal activity could take place. The City makes a valid point. However, it is unnecessary to reach a conclusion on the sub-lessee issue because Licensee's story is not credible.

Mr. Galloway's leased deli was at the rear of the Licensed Premises.²⁸ His story is that he entered the store shortly before the inspectors arrived, dropped the bags of

²⁸ Ex. 12; Test. of M. Sultan.

prohibited products behind the store's cash register area and walked back to have his deli employee make him a sandwich.²⁹ According to Mr. Galloway, he intended to come back and have a conversation with Licensee about the significant amount he owed on rent for the deli.³⁰ According to Mr. Galloway, "at this moment the Minnesota Revenue's inspectors came in, searched the bags against my will and objection, to find the products which I confirmed to the inspectors my ownership."³¹

Even assuming it to be true that Mr. Galloway dropped the bags behind the cash register area of the Licensed Premises on the same day, and just shortly before, the inspectors arrived, the undisputed fact is the bags of prohibited tobacco products were behind the cash register area. This is the same area of the store from which Licensee sold tobacco products. It defies logic and credulity that Mr. Galloway dropped the bags of prohibited products behind the register before proceeding to his deli. If the bags were his and intended for his possession only, he would have carried them back to his part of the Licensed Premises. No explanation was given for why he dropped them behind the cashier's counter. Given the amount of prohibited products found, their proximity to other legitimate tobacco products being sold and their proximity to the cash register, it is reasonable to conclude that they were behind the cashier's counter to be sold. Furthermore, Mr. Galloway owing a significant amount of money to Licensee undermines his credibility because he is indebted to him and may be inclined to make his payment in the form of a fabricated story. Mr. Galloway's story does not outweigh the physical findings of the inspectors. Those physical findings were consistent with the complaint received – that flavored tobacco products were being sold out of a bag kept behind the cash register.

The City Council should find that Licensee violated St. Paul Legislative Code § 324.07(j) by offering flavored tobacco products for sale. The City Council should impose the presumptive penalty for a first-time violation and suspend Licensee's Tobacco Shop License for 10 days.

B. J. C.

²⁹ Ex. 102; Test. of M. Sultan.

³⁰ Ex. 12; Test. of M. Sultan.

³¹ Ex. 102.