

SAINT PAUL CITY COUNCIL

In Re adverse action against all licenses held by
Tom Super USA, LLC d/b/a Super USA.

DEPARTMENT OF SAFETY AND
INSPECTION'S EXCEPTIONS TO
MARCH 1, 2017 REPORT OF
ADMINISTRATIVE LAW JUDGE

EXCEPTIONS TO MARCH 1, 2017 REPORT OF ADMINISTRATIVE LAW JUDGE:

- 1) In his Findings of Fact, the Administrative Law Judge, ("ALJ") found in Finding No. 4 "In 2014, due to criminal activity in the neighborhood of the gas station during the summer, Licensee hired two St. Paul police officers for security. When working for Licensee, the off-duty police officers sat outside the store in their car and were paid every two hours in cash."

Licensee offered his testimony alone to support this factual finding. He failed to provide any evidence in support his allegation. Licensee wasn't even able to recall the officer's full names. He was only able to identify them as Abby and Jeff. The only evidence that these events actually occurred is the self-serving testimony of the Licensee and is simply not credible.

For these reasons, the Department of Safety and Inspections requests that this Council delete this finding in its entirety:

~~Finding No. 4: In 2014, due to criminal activity in the neighborhood of the gas station during the summer, Licensee hired two St. Paul police officers for security. When working for Licensee, the off-duty police officers sat outside the store in their car and were paid every two hours in cash.~~

- 2) In his Findings of Fact, the ALJ found, in Finding No. 5 "The officers Licensee hired for the summer of 2015 asked Mr. Hassen about working for him in the summer of 2015. Mr. Hassen advised them he had to think about it. One of the officers then issued Licensee citations for employees selling loose cigarettes on April 22, May 5 and May 28, 2015."

Exhibit 1 outlines the license history for Tom Super USA. It does not contain any reference to citations.

Exhibit 8 is the Notice of Violation sent to Licensee on April 27, 2015 after a CRI was able to purchase individual cigarettes from an employee inside the store on April 22, 2015. License Manager, Eric Hudak testified that the \$500 administrative penalty for this violation was paid on May 13, 2015.

Exhibit 10 is the Notice of Violation sent to Licensee on May 14, 2015 after a CRI was able to purchase single cigarettes from an employee inside the store on May 5, 2015.

Exhibit 11 is a signature copy of Council Resolution, 15-1449 which states that a \$1,000 matrix penalty and 10 day suspension was imposed upon Licensee after the May 5, 2015 violation. Exhibit 11 states that the Notice of Administrative Hearing, which was sent to the Licensee on June 3, 2015, alleged an additional violation for again selling single cigarettes to a CRI on May 28, 2015.

Licensee failed to offer any actual evidence such as a copy of the citation to support his allegations that he was given citations for selling loose cigarettes by the officers who he had allegedly hired for cash the previous summer. The exhibits admitted into evidence do not reflect the issuance of citations; rather they detail adverse actions taken against the Licensee. The only evidence regarding the citations is the self-serving testimony of the Licensee and is simply not credible.

For these reasons, the Department of Safety and Inspections requests that this Council amend this finding as follows:

Finding No. 5: The officers Licensee hired for the summer of 2015 asked Mr. Hassen about working for him in the summer of 2015. Mr. Hassen advised them he had to think about it. One of the officers then issued Licensee citations for employees selling loose cigarettes on April, May 5 and May 28, 2015. On April 27, 2015, a Notice of Violation recommending adverse action was sent to the Licensee for the sale of single cigarettes to confidential reliable informant ("CRI") on April 22, 2015. A \$500 matrix penalty was requested. On May 14, 2015, a Notice of Violation for recommending adverse action was sent to Licensee for the sale of single cigarettes to a CRI on May 5, 2015. A \$1,000 matrix penalty was requested. The Notice of Administrative Hearing sent to the Licensee on June 3, 2015 alleged an additional sale of single cigarettes to a CRI on May 28, 2015 and the Department of Safety and Inspections recommended an upward departure to a \$2,000 matrix penalty and a 10 day suspension. Council Resolution 15-1449 imposed a \$1,000 matrix penalty and 10 day suspension.

- 3) In his Findings of Fact, the ALJ found, in Finding No. 6: "On May 15, 2015, Licensee paid a \$500 fine for individual cigarette sales that occurred on April 22, 2015, by a store clerk or clerks."

The ALJ cited Exhibits 8 and 9 as the basis for this finding. Exhibit 8 is the April 27, 2015 Notice of Violation. Exhibit 9 is an email from a Department of Safety and Inspections employee to others that notes that \$500 had been received from Tom Super USA for individual cigarette sales. The email is dated May 15, 2015 but lacks information on the date that the matrix penalty fee was paid. Exhibit 1 is the license text and contains the actual license history. It notes that the \$500 matrix penalty fee was received on May 13, 2015.

For these reasons, the Department of Safety and Inspections requests that this Council amend this finding as follows:

Finding No. 6: On May 13, 2015, Licensee paid a \$500 fine for individual cigarette sales that occurred on April 22, 2015, by a store clerk or clerks.

- 4) In Conclusions of Law No. 8 the ALJ found "While there are two violations constituting this third appearance, these two violations do not constitute a substantial and compelling reason to deviate from the presumptive penalty for a third appearance."

During the hearing, officers testified that Tom Super USA has come to their attention due to on-going problems in and around the address. Their reports document that the "illegal sale and use of narcotics is a huge problem in the neighborhood anchored by the Super USA. In response to this problem in June of 2015 Operation Weed Out was conducted by East FORCE. This resulted in 22 drug buys from 15 suspects made to informants over the period of 4 weeks. As a result of Operation Weed Out criminal activity in the area decreased. In recent months activity has increased." The License history and supporting documentation shows that during the time that Licensee has been operating Tom Super USA he has had the following tobacco and drug paraphernalia issues with his license:

6/18/2009 – Sold cigarettes to underage
12/7/2010 – Failed tobacco compliance check
2011 – Sale of single cigarettes
4/23/2015 – Sale of single cigarettes to CRI
5/12/2015 – Sale of single cigarettes to CRI
5/28/2015 – Sale of single cigarettes to CRI
9/14/2016 – Sale of a glass pipe to CRI
9/23/2016 – Sale of single cigarettes to CRI

The last matrix penalty in 2015 was a \$1,000 fine and a 10 day suspension.

For the above-stated reasons, DSI requests this Council adopt the following amended Conclusion of Law:

~~While~~ There are two violations constituting this third appearance, these two violations, do not in light of the Licensee's long history of non-compliance, constitute a substantial and compelling reason to deviate from the presumptive penalty for a third appearance.

5) The Department of Safety and Inspections further requests that the Council decline to adopt the accompanying memorandum of the Administrative Law Judge for the above-stated reasons.

Respectfully Submitted,

Dated: 3/10/17



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Representing the Department of Safety and Inspections