



RECEIVED

SEP 03 2015

CITY ATTORNEY

MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

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

September 1, 2015

Voice: (651) 361-7900
TTY: (651) 361-7878
Fax: (651) 539-0300

Shari Moore, City Clerk
City of St. Paul
310 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102

Re: *In the Matter of Payne EZ Market, Inc*
OAH 8-6020-32686

Dear Ms. 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, 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) 361-7911, or by e-mail at katie.lin@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 Katie Lin at (651) 361-7911 or katie.lin@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,

A handwritten signature in cursive script that reads "Eric Lipman /kj".

ERIC L. LIPMAN
Administrative Law Judge

ELL:kjl
Enclosure
cc: Geoffrey S. Karls
Mohammed Abraham

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF SAINT PAUL

In the Matter of All Licenses held by Payne
EZ Market, Inc., for the Premises Located
at 1132 Payne Avenue in Saint Paul

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

License ID No. 20150000195

This matter came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on August 13, 2015. The hearing record closed at the end of the hearing on that day.

Geoffrey S. Karls, Assistant City Attorney, appeared on behalf of the city of St. Paul's Department of Safety and Inspections (the City). Mohammed Abraham, Owner, appeared on behalf of the Respondent Licensee, Payne EZ Market, Inc. (Respondent or EZ Market).

STATEMENT OF THE ISSUES

1. Did the Respondent EZ Market violate a statute, ordinance, or regulation related to the licensed activity on May 28, 2015?
2. If so, is the proposed \$500 penalty the appropriate licensing sanction?

SUMMARY OF CONCLUSIONS

The City demonstrated by a preponderance of the evidence that the Respondent violated the requirements of Saint Paul Legislative Code § 324.07(a) (2015) by selling two cigarettes outside of their original packaging. Further, application of the presumptive penalty – a fine of \$500 – is appropriate on this record.

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

FINDINGS OF FACT

1. Mohammed Abraham, is the owner of EZ Market, a grocery and convenience store located at 1132 Payne Avenue, in St. Paul, Minnesota.¹

2. Prior to obtaining his own business license and opening the market in February of 2015, Mr. Abraham worked as an employee for other several other retail establishments along Payne Avenue.²

3. Prior to the opening of the EZ Market, 1132 Payne Avenue hosted another retail shop, Little Burma Grocery.³

4. In May of 2015, St. Paul Police opened an investigation regarding illegal cigarette sales occurring at the EZ Market.⁴

5. Saint Paul Legislative Code § 324.07(a) prohibits the sale of cigarettes outside of their original packaging or "in packages of fewer than twenty (20) cigarettes."⁵

6. As part of the Police Department's investigation, St. Paul Police Officers David Kantorowicz and Dean Koehnen asked a Confidential Informant to undertake a "controlled buy" of loose cigarettes from the EZ Market. At approximately 12:30 p.m. on Thursday, May 28, 2015, the officers brought the Confidential Informant to the 1100 block of Payne Avenue, provided the Informant with currency and searched the Informant's person to ensure that the Informant was not carrying any tobacco products.⁶

7. From a distance of approximately a city block from the entrance of the EZ Market, Officers Kantorowicz and Koehnen watched as the Confidential Informant entered the store and returned to the officers a few minutes later. Upon the Informant's return, the officers were given two Camel brand cigarettes that had not been in the Informant's possession when the Informant was dispatched to the store.⁷

8. The Informant reported that the cigarettes were purchased from a store clerk in return for \$1.00. The Informant gave the clerk the currency, which the clerk placed into the cash register, and the clerk withdrew two loose cigarettes from an open carton below the sales counter.⁸

¹ Exhibits 5 at 2, 3, and 4; Testimony of Mohammed Abraham.

² Test. of M. Abraham.

³ Exs. 6 and 7; Test. of David Kantorowicz.

⁴ Ex. 1 at 3; Test. of D. Kantorowicz.

⁵ St. Paul Legislative Code § 324.07(a).

⁶ Ex. 1; Test. of D. Kantorowicz.

⁷ *Id.*

⁸ *Id.*

9. The Informant reported that the sales clerk who sold him the two loose cigarettes was a light-skinned Arab male with a dark goatee and dark hair.⁹

10. Mr. Abraham is the EZ Market's only sales clerk, and he works in the market during all hours that the store is open for business to the public.¹⁰

11. Mr. Abraham is a light-skinned Arab male with a dark goatee and dark hair. He matches the description rendered to Officers Kantorowicz and Koehnen by the Confidential Informant on May 28, 2015.¹¹

12. On July 12, 2015, the city of St. Paul issued a Notice of Violation to EZ Market. In the Notice of Violation, the City's Department of Safety and Inspection noted that it would recommend that the City Council impose a penalty of \$500.00 for the alleged violation of Saint Paul Legislative Code § 324.07(a).¹²

13. EZ Market made a timely appeal of the claimed violation, resulting in the referral for contested case proceedings.¹³

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c) (2015).

2. The hearing in this matter was conducted in accordance with the St. Paul Legislative Code § 310.05 (2015) and the contested case procedures of Minn. Stat. §§ 14.57-.62 (2014).

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

4. Because the City proposes regulatory discipline, it has the burden of proving by a preponderance of the evidence that action against EZ Market's licenses is appropriate.¹⁴

⁹ *Id.*

¹⁰ Test. of M. Abraham.

¹¹ See Ex. 1.

¹² Ex. 2.

¹³ Ex. 3; NOTICE AND ORDER FOR HEARING, OAH Docket No. 8-6020-32686 at 2.

¹⁴ Minn. R. 1400.7300, subp. 5 (2015).

5. Under the St. Paul Legislative Code, the St. Paul City Council has grounds to take adverse action against a City-issued license if the licensee violates a statute, ordinance or regulation related to the licensed activity.¹⁵

6. The City demonstrated by a preponderance of the evidence that the Respondent violated the requirements of Saint Paul Legislative Code § 324.07(a) by selling two cigarettes outside of their original packaging.

7. The penalty matrix of the St. Paul Legislative Code includes presumptive penalties for particular code violations.¹⁶

8. The matrix includes a presumptive penalty of \$500 for a first violation of provisions of the Legislative Code relating to the licensed activity.¹⁷

9. The City has shown a sufficient basis to impose a presumptive penalty of \$500 against EZ Market.

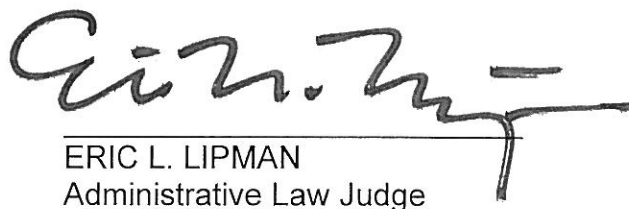
10. There are no substantial or compelling reasons in the record to justify a deviation from the presumptive penalty in this case.

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

RECOMMENDATION

IT IS RECOMMENDED that the St. Paul City Council take appropriate action against the licenses held by Payne EZ Market, Inc., for the premises located at 1132 Payne Avenue in Saint Paul, Minnesota.

Dated: September 1, 2015


ERIC L. LIPMAN
Administrative Law Judge

¹⁵ St. Paul Legislative Code § 310.06(a), (b)(6)(a).

¹⁶ St. Paul Legislative Code § 310.05(m).

¹⁷ *Id.*

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 Shari Moore, City Clerk, City of Saint Paul, 310 City Hall, 15 W. Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

This dispute centers on conflicting accounts of the same event: Officer Kantorowicz described the procedures that he used for a “controlled buy” of loose cigarettes from the EZ Market and Mr. Abraham denies that any such sale took place.

Unlike Officer Kantorowicz’s account, however, Mr. Abraham’s version does not find support in any other materials in the hearing record. For example, while the EZ Market uses a video surveillance system to record events occurring in the store, Mr. Abraham asserts that the system overwrites recordings with new images on the first day of every month.¹⁸ Thus, notwithstanding the fact that Mr. Abraham received notice of the City’s claims in mid-June 2015, Mr. Abraham maintained that there were no images of any of the store’s operations in May – images that would establish his innocence.¹⁹ Similarly, notwithstanding the fact that Mr. Abraham maintained that Camel brand cigarettes are not sold at the EZ Market,²⁰ the hearing record does not include invoices or records to support this claim.

On balance, Officer Kantorowicz’s version of events is more credible. The City proved by a preponderance of the evidence that action against EZ Market’s licenses is appropriate.

E. L. L.

¹⁸ Test. of M. Abraham.

¹⁹ *Id.*

²⁰ *Id.*