

March 2, 2018

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 License held by Dahir Wako
d/ba/ 7th Grocery for the Premises Located at 43 7th Street West in
Saint Paul
OAH 80-6020-34978***

Dear City Clerk Moore:

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

If you have any questions, please contact my legal assistant Lisa Armstrong at (651) 361-7888 or lisa.armstrong@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,



LAURASUE SCHLATTER
Administrative Law Judge

LSS:la

Enclosure

cc: Therese Skarda
Dahir Wako
Docket Coordinator

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 the Cigarette/Tobacco License held by Dahir Wako d/b/a 7th Grocery for the Premises Located at 43 7th Street West in Saint Paul	OAH Docket No.: 80-6020-34978
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Lisa Armstrong certifies that on March 2, 2018, she served the true and correct **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION UPON DEFAULT** by courier service, by placing it in the United States mail with postage prepaid, or by electronic mail, as indicated below, addressed to the following individuals:

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

VIA EMAIL ONLY

Therese Skarda
St. Paul City Attorney's Office
400 City Hall & Courthouse
15 West Kellogg Blvd
Saint Paul, MN 55102
Therese.Skarda@ci.stpaul.mn.us

Dahir Wako
7th Grocery
43 7th St W
Saint Paul, MN 55102

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL DEPARTMENT OF SAFETY AND INSPECTIONS

In the Matter of the Cigarette/Tobacco
License held by Dahir Wako d/b/a 7th
Grocery for the Premises Located at 43
7th Street West in Saint Paul

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

This matter came on for a hearing before Administrative Law Judge LauraSue Schlatter on February 8, 2018.

Therese Skarda, Assistant Attorney General, appeared on behalf of the City of St. Paul Department of Safety and Inspections (City). There was no appearance by, or on behalf of, Licensee Dahir Wako.

The City moved for default at the hearing. The record in this matter closed on February 22, 2018, which was ten working days following the City's Motion for Default.

STATEMENT OF THE ISSUES

1. Did Licensee violate Saint Paul Legislative Code § 324.07 (2016) by selling, offering for sale, or otherwise distributing flavored tobacco products?
2. Should a matrix penalty of \$500.00¹ be required of licensee as a result of the December 21, 2017, documentation of sale, offer for sale, or distribution of flavored tobacco products at the premises of 43 7th Street West in St. Paul, Minnesota?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Licensee is in default and recommends that the allegations in the Notice of Administrative Hearing be accepted as true and deemed proven.

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

¹ St. Paul Legislative Code § 310.05(m)(2) (2016).

FINDINGS OF FACT

1. On January 12, 2018, a Notice of Administrative Hearing in this matter was mailed to Licensee at his last known addresses.²

2. The Notice of Administrative Hearing indicated that a hearing would be held in this matter on February 8, 2018, at 9:30 a.m., at the Office of Administrative Hearings at 600 Robert Street North, St. Paul, MN 55101.³

3. In conformity with Minn. R. 1400.6000 (2017), the Hearing Notice in this matter also includes the following statement:

If you fail to appear at the hearing, your ability to challenge the allegations will be forfeited and the allegations against you which have been stated earlier in this notice may be taken as true.⁴

4. On January 25, 2018, the Office of Administrative Hearings served the First Prehearing Order on the Licensee at the business address provided by the City.⁵ The First Prehearing Order provided notice of the February 8, 2018, hearing, along with a statement consistent with Minn. R. 1400.6000.⁶

5. No one appeared at the February 8, 2018, hearing on behalf of Licensee. No request was made for a continuance, nor was any communication received by the undersigned from Licensee prior to the February 8, 2018, hearing.

6. Licensee's failure to appear at the hearing was without consent of the Administrative Law Judge.

7. Because Licensee failed to appear at the hearing, Licensee is in default.

8. Pursuant to Minn. R. 1400.6000, the allegations contained in the Hearing Notice, a copy of which is attached as Attachment A, are taken as true, deemed proven without further evidence, and incorporated by reference into these Findings of Fact.

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

CONCLUSIONS OF LAW

1. The City and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 (2016) and St. Paul Legislative Code § 310.05 (2016).

² See Attachment A at Affidavit of Julie Kraus, service dated January 12, 2018.

³ *Id.* at 1.

⁴ Notice of Administrative Hearing (January 12, 2018) at 3.

⁵ See Attachment B at Certificate of Service, dated Jan. 25, 2018.

⁶ *Id.* at 2-3.

2. The Licensee received timely and proper notice of the hearing in this matter when the City sent the Hearing Notice to his last known address.

3. The City has complied with all relevant procedural requirements of statute and rule.

4. Under Minn. R. 1400.6000, the Licensee is in default as a result of his failure to appear at the scheduled prehearing conference.

5. Under Minn. R. 1400.6000, when a party defaults by failing to appear at a hearing without the prior consent of the judge, the allegations and the issues set out in the Hearing Notice may be taken as true and deemed proved. The Administrative Law Judge therefore deems the allegations to be true.

6. Saint Paul Legislative Code Section 310.06 (b) (2016) provides bases for adverse action against licenses including, in relevant part:

(6)(a) The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance, or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith;

...

(6)(c) The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.

...

(8) The licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure, or endanger the safety, health, morals, comfort, or repose of any considerable number of members of the public.

7. The City has grounds to take disciplinary action against the Licensee's license based upon the allegations set forth in the Hearing Notice.

8. An order by the City taking disciplinary action against the Licensee's license is in the public interest.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the City take reasonable and appropriate disciplinary action against Dahir Wako. It is recommended that the Saint Paul City Council issue a \$500.00 presumptive penalty against the cigarette/tobacco license held by Dahir Wako d/b/a 7th Grocery for the premises located at 43 7th Street West in Saint Paul.

Dated: March 2, 2018



LAURASUE SCHLATTER
Administrative Law Judge

Reported: Default

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.