



City of Saint Paul

Signature Copy

Resolution: RES 23-1381

City Hall and Court
House
15 West Kellogg
Boulevard
Phone: 651-266-8560

File Number: RES 23-1381

Adopting the Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge as amended and imposing the presumptive matrix penalty of a 10-day suspension of the Tobacco Shop License for the premises located at 864 Rice Street. (Licensee's attorney will speak on behalf of the licensee)

WHEREAS, on March 16, 2023, Amira Grocery, Inc. d/b/a Winnipeg Grocery, Inc, ("Licensee") under License #20210000879, received a Notice of Violation and Request for Imposition of a 10-day Suspension ("Notice") of the Tobacco Shop License based on the February 2, 2023, discovery of multiple of prohibited flavored products on the Licensed Premises after a complaint that the Licensee was selling prohibited flavored products from black bags behind the counter; and

WHEREAS, the NOV stated "Please note: If you choose an administrative hearing, the Department of Safety and Inspections reserves the right to request that the City Council impose the costs of this administrative hearing, per Saint Paul Legislative Code §310.05(k); and

WHEREAS, Saint Paul Legislative Code §310.03(k) allows for council to impose the costs of an administrative hearing stating:

"The council may impose upon any licensee or license applicant some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the cost of the administrative law judge or independent hearing examiner, stenographic and recording costs, copying costs, city staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The council may impose all or part of such costs in any given case if (i) the position, claim or defense of the licensee or applicant was frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment; ..."

WHEREAS, the Licensee, through his attorney, Douglas Nepp, Nepp & Hackert, LLC, requested an Administrative Hearing; and

WHEREAS, a hearing was held on the Notice before Administrative Law Judge Barbara J. Case ("Judge Case") on July 20, 2023. Each party was represented by Counsel, submitted exhibits and stipulated facts into the record, the Licensee testified on his own behalf and the parties made closing arguments; and

WHEREAS, under the penalty matrix in Chapter 324.10 of the Legislative Code the presumptive penalty in this matter is a 10-day license suspension; and

WHEREAS, on August 15, 2023, Judge Case issued her Findings of Fact, Conclusions of Law and a Recommendation, herein incorporated as Exhibit 1, which supported the Department's recommendation and asserted that 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"; and

WHEREAS, Judge Case found the following items comprise the prohibited products that 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 Fusion; and

WHEREAS, Judge Case also found that “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.”; and

WHEREAS, Judge Case concluded that “The City has established that Licensee violated St. Paul Legislative Code § 324.07(j) by offering prohibited flavored tobacco products for sale; and

WHEREAS, Judge Case also concluded that the “Licensee has not established any basis to depart from the presumptive penalty for its violation.”; and

WHEREAS, in her Memorandum, Judge Case concluded that “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.”; and

WHEREAS, based on the findings of the Administrative Law Judge that the Licensee’s story was not credible, and the blatant violation of the City’s regulations related to the sale of prohibited flavored tobacco products, the Department is recommending that City Council impose the costs of the contested hearing upon the Licensee; and

WHEREAS, as evidenced by the three (3) invoices the Department of Safety and Inspections received from the Office of Administrative Hearings the cost of the hearing was \$4,415.00; and

WHEREAS, although reimbursement for city staff and attorney time is also permissible under Saint Paul Legislative Code §310.03 (k), the Department is not recommending that the Council require the Licensee to reimburse the City for city staff and attorney time; and

WHEREAS, at a hearing on October 4, 2023, the City Council considered all the evidence contained in the record including Judge Cases' Findings of Fact, Conclusions of Law and Recommendation and the oral arguments presented before the City Council; now, therefore, be it

RESOLVED, that the City Council issues this decision based upon consideration of the record of the entire proceedings herein, including the oral argument from the Licensee and his attorney from the July 20, 2023, hearing; and be it

FURTHER RESOLVED, that the Findings of Fact, Conclusions of Law and Recommendation of Judge Case issued on August 15, 2023, in the Matter of Tobacco Shop Licenses Held by Amira Grocery d/b/a Winnipeg Grocery for the Premises Located at 864 Rice Street in Saint Paul, OAH 71-6020-39197 with the exception of Findings of Fact three (3), four (4) and nine (9) are hereby adopted as the Findings of Fact and Conclusions of the City Council in this matter and be incorporated herein by reference; and be it

FURTHER RESOLVED, that Finding of Fact three (3) is hereby amended as follows:

3. The Licensed Premises has 3600 square feet of interior space and has one public entrance. 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. The area is open at one end. At the rear of the store is the deli) which Licensee sub-leased for \$1,500 per month to Melvin Galloway. By May of 2023, ~~December of 2023~~, Mr. Galloway owed Licensee \$7,500 in back rent. 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.

FURTHER RESOLVED, that Finding of Fact four (4) is hereby amended as follows:

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

FURTHER RESOLVED, that Finding of Fact nine (9) is hereby amended as follows:

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 2, 2023, ~~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 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. Mr. Galloway has asked the Minnesota Department of Revenue to return the products to him.; and be it

FURTHER RESOLVED, the Tobacco Shop License held by Licensee will be suspended for 10 days; and be it

FURTHER RESOLVED, Council will impose the costs of the administrative hearing in the amount of \$4,415.00 per Saint Paul Legislative Code §310.03(k). Such payment shall be received within 30

days after the adoption of this resolution; and be it

FINALLY RESOLVED, that the 10-day suspension of the Tobacco Shop License held by Licensee will begin on a date determined by the Department, such date to begin within 14 days after this resolution is signed.

A copy of this resolution, as adopted, shall be sent by first class mail to the Administrative Law Judge and to the license holder.

At a meeting of the City Council on 10/4/2023, this Resolution was Passed.

Yea: 7 Councilmember Brendmoen, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince, Councilmember Jalali, Councilmember Yang, and Councilmember Balenger

Nay: 0

**Vote Attested by
Council Secretary**



Shari Moore

Date 10/4/2023

Approved by the Mayor



Melvin Carter III

Date 10/5/2023

Clerk



Shari Moore

Date

Test Signature



Shari Moore

Date