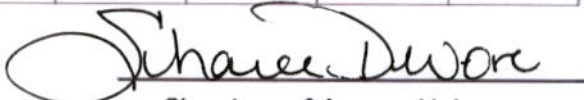




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BOARD MEETING MINUTES JANUARY 5, 2023

The Arkansas Tobacco Control Board met on Thursday, January 5, 2023, for its monthly meeting in the Main Street Mall Building, located at 101 E. Capitol Avenue, Little Rock, Arkansas, beginning at 10:00 a.m. in Suite 119. There were seven (7) Board members present.

- **Board Members Present:** Chairman Gary Proffitt Jr., Mr. Kerry Lott, Mr. Sam Stathakis, Mr. David Hendrix, Jr., Dr. Brad Mayfield, Dr. Patricia Knott (arrived at 10:08), and Dr. Shabbir Dharamsey.

CALL TO ORDER.

- Chairman Gary Proffitt called the ATC Board meeting to order and opened the meeting welcoming the guests and staff.
- There were two hearings set for today's Board Meeting. As a result, a hearing officer, Mr. Jason Johnson, and court reporter, Ms. Nicole Neal, were present.

BOARD MEETING MINUTES

Chairman Gary Proffitt requested a motion to approve the board meeting minutes from December 1, 2022. A motion was made by Mr. Sam Stathakis and seconded by Dr. Brad Mayfield to approve the December 1, 2022, minutes. It passed with six (6) yes votes and zero (0) opposing votes.

STIPEND & TRAVEL EXPENSE

Chairman Gary Proffitt requested the Board's approval for their stipend and travel expense payments for the year of 2023. A motion was made to approve by Dr. Shabbir Dharamsey and seconded by Dr. Brad Mayfield. The motion passed with six (6) yes votes and zero (0) opposing votes.

WHOLESALE PERMIT APPLICATIONS

Chairman Proffitt presented three (3) new Wholesale Tobacco and Vapor product Permit applications to the Board for approval.

- ❖ Maxwell Distributors, LLC. - Denver, CO
- ❖ Savage Enterprises - Irvine, CA

❖ **The C Store Depot, INC. - Tampa, FL**

- A motion was made by Mr. David Hendrix, Jr. to approve all three (3) wholesale applications and seconded by Dr. Dharamsey. The motion passed with six (6) yes votes and zero (0) opposing votes.

NEW RETAIL PERMITS ISSUED

- Director Greg Sled requested the Board members to review and approve the list of thirty-eight (38) new permits (those permits other than wholesale permits) issued from November 26, 2022 through December 30, 2022.
- A motion was made to accept and approve the list of thirty-eight (38) new permits issued by Mr. Sam Stathakis and seconded by Dr. Brad Mayfield. Dr. Patricia Knott arrived at 10:08. The motion passed with seven (7) yes votes and zero (0) opposing votes.

DEFAULT JUDGMENTS

- Director Greg Sled presented the December default judgement list to the Board to review and approve.
 - A motion was made to approve the Default Judgments by Mr. Sam Stathakis and was seconded by Mr. David Hendrix, Jr. to approve. The motion passed with seven (7) yes votes and zero (0) opposing votes.

ACCEPTED OFFERS OF SETTLEMENT

- Director Greg Sled requested the Board members to review and approve the list of Accepted Offers of Settlement dated December 30, 2022. A motion was made to accept the Accepted Offers of Settlement by Mr. Sam Stathakis and seconded by Dr. Brad Mayfield. The motion passed with seven (7) yes votes and zero (0) opposing votes.

ENFORCEMENT ACTIVITY

- Director Sled introduced two (2) resignations: Tony Overstreet and Lorene Ranson. Director Sled reported for following results for compliance checks.

October - 50 / 553 = 9.04 %

November - 42 / 519 = 8.11 %

December - 34 / 464 = 7.33 %

FY 2023 - 388 / 3658 = 9.24 %

Results for Inspections for the month of December, with 2 out of 19 inspections totaled 2 violations = 10.53 %.

FDA ACTIVITY

Deputy Director Ray Owens reported for the month of December 2022 FDA Agents completed 113 inspections with 6 potential violations. FDA Agents complete 27 follow-up Inspections with 6 potential violations. FDA December violation rate was 5.3 %.

LEGAL UPDATE

- ATC Attorney Will Olson reported no new legal updates for this month.

FULL HEARINGS

- ❖ Case No. 2022-10967

TOWSON GLASS & SMOKE, Permit No. NA (No Permit)

Ahmad Zaman

2515 Towson Avenue, #1/2

Fort Smith, Arkansas 72901

Violation: Selling without a Permit in violation of A.C.A. § 26-57-266

Mr. Jason Johnson, Attorney, served as the Hearing Officer. Ms. Nicole Neal served as the Court Reporter. Mr. AHMAD ZAMAN appeared *pro se* and offered testimony as the representative of himself and of Towson Glass and Smoke (collectively, "Petitioner"). ATC Attorney, William R. Olson, appeared on behalf of Arkansas Tobacco Control ("ATC"). ATC Director Greg Sled, Fort Smith PD Detective Proctor, and ATC Agent Doug Brooks also appeared and offered testimony.

Without any objections from any party, the Hearing Officer admitted ATC's Exhibit 1 into evidence. ATC's Exhibit 1 included, but was not limited to, a packet containing an ATC Agent narrative, Fort Smith PD Detective Proctor's notes, photographs, the Notice of Offer and Settlement, the Petitioner's request for leniency hearing, and the Notice of Hearing. Mr. Zaman agreed on the record that he received the Notice of Hearing.

ATC first called Fort Smith PD Detective Richard Proctor to testify. Detective Proctor testified regarding his undercover purchase of a vapor/e-liquid product from Towson Glass and Smoke. Through Detective Proctor's testimony, and without any objections from any party, the Hearing Officer also admitted ATC's Exhibit 2 into evidence. ATC's Exhibit 2 was a video recorded by Fort Smith PD Detective Proctor of an undercover purchase of a Vapor Product/E-Liquid Product.

ATC next called ATC Agent Doug Brooks to testify. ATC Agent Doug Brooks testified as to the ATC inspection at Towson Glass and Smoke, his conversation with the person who sold the vapor/e-liquid product to Detective Proctor, and his conversations with Mr. Ahmad Zaman. Mr. Zaman asked ATC Agent Doug Brooks why the Agent did not confiscate the non-nicotine

vapor/e-liquid products during an earlier inspection. Agent Brooks testified that he decided to only confiscate the nicotine products at that particular inspection. Board Member Dr. Dharamsey noted that all are aware that ignore of the law is not a defense and that it is not the agent's duty to teach the law. ATC Agent Brooks agreed and stated that the deception in this current case before the Board further led to his decision to confiscate the product.

ATC Director Greg Sled testified that the initial Director's offer of \$1,500.00 civil penalty and destruction of confiscated product based on the facts specifically in this case and consistent with how ATC has treated other similar cases. Director Sled also testified that he did not recall anyone at the previous Board hearing giving the green light to Mr. Zaman to sell non-nicotine vapor/e-liquid products without a permit.

Mr. Zaman testified that he was before the Board last April 2021 for selling vapor products and e-liquid products without a permit. Mr. Zaman agreed that he was in the wrong, but testified that he was not selling any nicotine vapor/e-liquid products this time and that he should have been first warned in this case.

In light of the evidence and testimony submitted before the Board, a motion was made by Dr. Shabbir Dharamsey and seconded by Mr. Kerry Lott to approve the \$1,500.00 civil penalty and destruction of confiscated product for the violation. Motion passed with seven (7) yes votes and zero (0) opposing votes.

❖ Case No. 2022-01777
SAMS WIRELESS, PERMIT No. 08111-03
Mohamed Yahya Nasser Jahmee
256 South Alabama Street
Marianna, Arkansas 72360

Violations:

- (1) Possession of Untaxed Tobacco Products in violation of A.C.A. § 26-57-245.
- (2) Failure to Maintain Invoices in violation of A.C.A. § 26-57-213.
- (3) No Server Awareness Form on File for an Employee Selling Tobacco Products in violation of ATC Rule 4.1
- (4) Buying Tobacco Products from an Unlicensed Dealer in violation of A.C.A. § 26-57-228.
- (5) Reuse of Container Unlawful in violation of A.C.A. § 26-57-241.

Mr. Jason Johnson, Attorney, served as the Hearing Officer. Ms. Nicole Neal served as the Court Reporter. Mr. MOHAMED YAHYA NASSER JAHMEE appeared and was represented by Legal Counsel, Mr. Alvin Simes, who represented Mr. Jahmee and Sams Wireless (collectively, "Petitioner"). ATC Attorney, William R. Olson, appeared on behalf of Arkansas Tobacco Control ("ATC"). ATC Director Greg Sled, ATC Agent Jonathan Vince, ATC Senior Auditor Maurice Gilmore, ATC Agent Matt Thomas, and Mr. Mohamed Yahya Nasser Jahmee also appeared and offered testimony.

ATC called ATC Agent Jonathan Vince, ATC Senior Auditor Maurice Gilmore, ATC Agent Matt Thomas, and ATC Director Greg Sled as witnesses. Legal Counsel for Permittee, Mr. Alvin Simes, cross-examined the witnesses and made numerous objections to the submission of evidence and to testimony throughout the approximately four (4) hour proceeding, which includes multiple recesses. The Hearing Officer handled the objections and determined whether to accept as evidence certain documents and certain testimony. With objections, the Hearing Officer accepted as evidence ATC's exhibits, including, but not limited to, Agent Narratives, surveillance camera footage, Permit Application, NGG Invoices, Unpaid Tax Summary, Notices of Hearing, and Notices and Offers of Settlement. The Hearing Officer also proffered as Hearing Officer's Exhibits multiple emails between Mr. Alvin Simes and Mr. William R. Olson regarding the sending of various documents at issue. Mr. Simes contented that he had not received documents until the day of the hearing. Mr. Olson submitted to the Hearing Officer multiple emails showing the documents were sent to Mr. Simes prior to the date of the hearing. Mr. Simes called Mr. Mohamed Yahya Nasser Nahmee as a witness. Mr. Nahmee testified that he did not purchase the products listed in the invoices and that someone else appears to be using his information and/or identity. Both Mr. Olson and Mr. Simes put on closing arguments. Individual Board Members asked questions of witnesses and legal counsel.

In light of the testimony and evidence submitted before the Board over the approximately four (4) hour proceeding, a motion was made by Mr. David Hendrix, Jr. and seconded by Dr. Shabbir Dharamsey to approve the Director's initial offer: the \$100,816.20 civil penalty and twenty-five (25) permit suspension for the violations of A.C.A. § 26-57-245, A.C.A. § 26-57-213, and A.C.A. § 26-57-228, a Warning for the violation of ATC Rule 4.1, and destruction of confiscated product. Motion passed with seven (7) yes votes and zero (0) opposing votes.

OPEN FORUM

- Chairman Gary Proffitt asked if there were any questions or comments from the Board members. There were no questions or comments made at that time.
- Chairman Gary Proffitt asked those in the public audience if there were any questions or comments. There were no questions or comments made at that time.

ADJOURNMENT

In closing, Chairman Gary Proffitt stated that the next ATC Board meeting is scheduled for February 2, 2023. A motion was made by Mr. Sam Stathakis and seconded by Dr. Brad Mayfield to adjourn. It was approved with seven (7) yes votes and zero (0) opposing votes. The meeting was adjourned.

Minutes prepared by:

Sharee Devore

Sharee Devore

Dated: January 09, 2023