

STATE OF INDIANA
BEFORE THE ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF)	
THE PERMIT OF)	
GOOD FOOD MART, INC.)	PERMIT NO. TC 14207001
2204 W. 9 th STREET)	VIOLATION EX # 22003887T
MARION, INDIANA 46953)	
PERMITTEE)	

ORDER ON FINAL HEARING

Comes now James W Payne, Hearing Judge, and having presided over the final hearing in the above-entitled matter, makes the following findings and orders:

1. BACKGROUND OF THE CASE

Good Food Mart, Inc. Certificate Number TC 14207001 (Certificate Holder) is the holder of a retail tobacco certificate issued by the Indiana Alcohol and Tobacco Commission (ATC). The ATC sent a Notice of Hearing to Certificate Holder on October 6, 2022, scheduling a final hearing on the above-entitled certificate number and violation. Certificate Holder failed to appear for the final hearing.

II. FINDINGS OF FACT

1. ATC Prosecutor Andrew Wignall (Prosecutor) sent Notice of Hearing to Certificate Holder at the address of record on October 6, 2022, the order signed by Jessica Allen, Chairwoman of ATC, which notice included the date for the final hearing of November 22, 2022 at 1 PM.
2. The alleged violation was for I.C. 35-46-1-10.2 Retail Sale or Distribution of Tobacco to Minors.
3. After sending the Notice of Hearing on October 6, 2022, Prosecutor had contact with a representative of the Certificate Holder on or about November 3, 2022, November 9, 2022, November 14, 2022, and November 15, 2022, having discussions regarding the issues in this matter and possible resolution.

4. After November 16, 2022, there were no further discussions nor communications between Prosecutor and Certificate Holder.
5. The final hearing was scheduled for November 22, 2022 at 1 PM, EST in the ATC hearing room located at Indiana Government Center South, Room E114, 302 W. Washington St., Indianapolis, Indiana and the final hearing was scheduled for three hours.
6. At 1 PM on November 22, 2022, neither Certificate Holder nor an attorney representing the Certificate Holder appeared.
7. The Hearing Judge waited until 1:25 PM and proceeded with the hearing.
8. Excise officer Chaston Lee Smithers was called by Prosecutor as witness on the facts of the allegations.
9. Ofc. Smithers testified as follows:
 - A. In the evening of April 8, 2022, he observed individuals going into and coming out of The Good Food Mart, Inc. and observed a young appearing individual enter the premises and purchase four (4) Four Loko alcoholic beverages and one (1) package of Dutch Cigarillos and then exit the premises.
 - B. He identified himself to that individual and determined that Individual to be John Flowers who had purchased the alcoholic beverage and the cigarillos and, upon discussing further with him, it was determined that he- John Flowers- did not have identification on him and that he was underage- 20 years old- and that the individual inside the building sold him the alcohol and cigarillos without asking for identification.
 - C. He then went into the business and identified the individual in the building as Satnam Singh, an individual who the officer knew from previous violations, who indicated that John Flowers presented an ID to Satnam Singh.
 - D. The officer indicated that John Flowers had no identification on him at the time of the purchase of the alcohol and cigarillos, at which time Satnam Singh indicated that John Flowers had been in the store before and had presented an ID, at which time the officer indicated that John Flowers was under the age of 21.
 - E. The officer issued a citation to Satnam Singh who signed the violation.
10. Prosecutor noted and stated for the record that Good Food Mart, Inc. had three previous violations, the first being on June 13, 2021 (and two others shortly after the first violation) which resulted in a \$500 fine, the second of which resulted in a \$1000 fine, and the third violation which resulted in a \$1000 fine and a 3-day suspension of the permit.

11. Officers Smithers testified that some previous violations filed against Certificate Holder were served to Satnam Singh because he was at the business when the violations occurred, and that Certificate Holder had continued to have Satnam Singh conduct business in spite of those violations.
12. Satnam Singh was not truthful with the officer when he indicated that John Flowers provided identification upon purchasing the alcohol and cigarillos. And when confronted with that fact, then indicated that he was familiar with John Flowers from previous transactions. This indicated the knowledge of his responsibilities to determine the age of the purchaser and he told willingly to be this honest in the transactions and communications to the officer.
13. Certificate Holder provided no evidence or testimony that it had taken steps by discipline or additional training to change its practices which resulted in four (4) violations of Indiana laws or ATC rules, regulations, or IAC code.
14. Four (4) violations within one year indicate a total disregard for the laws and ATC rules, regulations and policies which are the conditions upon which the permit was issued to Certificate Holder.
15. There is no reason to believe that Certificate Holder will in the future conduct its business, authorized under its permit, pursuant to the laws rules, regulations, and policies under which the permit was issued by ATC.
16. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

III CONCLUSIONS OF LAW

1. ATC has jurisdiction over this matter pursuant to IC 7.1-1-2-2 and IC 7/1-2-3-4.
2. Notice of the violations was proper. 905 IAC-1-37-1 and 905 IAC 1-37-2.
3. Judgment by default for failure to appear is appropriate. 905 IAC 1-37-9.
4. Certificate Holder was given the opportunity to fully participate in the violation hearing. 905 IAC 1-37-10.
5. The order resulting from the hearing has been issued in writing within 45 days after the conclusion of the hearing. 905 IAC 1-37-12.
6. Certificate Holder was provided in writing notice of the alleged violation. IC 7.1-3-18.5-5.
7. ATC has the discretionary authority to issue, deny, suspend, revoke, or not renew all permits and certificates authorized by statute. IC 7.1-2-3-9.

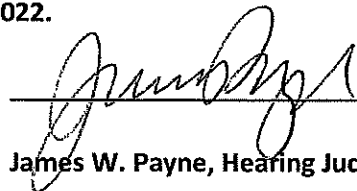
8. A retail establishment that sells or distributes tobacco, an e-liquid, or an electronic cigarette to a person less than twenty-one (21) years of age commits a Class C infraction. IC 35-46-1-10.2
9. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

IV JUDGMENT ORDER

Certificate Holder, Good Food Mart, Inc., failed to appear pursuant to the Notice of Hearing for the final hearing, evidence was heard and concluded, and the Hearing Judge now orders as follows:

1. The tobacco sales permit issued to Good Food Mart; INC. is hereby revoked.

All of which is ordered this 23rd of November 2022.



James W. Payne, Hearing Judge

Cc:


Prosecutor

Good Food Mart, Inc.

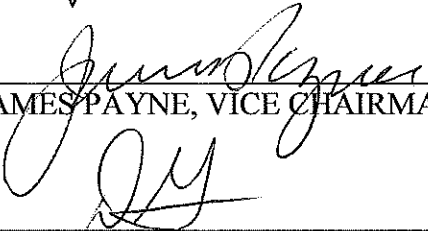
2204 W 9th Street

Marion, Indiana 46953

Approved this 4th day of January, 2023.



JESSICA ALLEN, CHAIR



JAMES PAYNE, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER