

STATE OF INDIANA

BEFORE THE ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF)
THE PERMIT OF)
FUEL EXPRESS INC. dba Golo) PERMIT NO. TC # 14058001
1101 CLARK ROAD) EX # 22002023
GARY, INDIANA 46404)
Permittee.)

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Fuel express inc., dba Golo gas station, is the holder of a tobacco permit issued by the Indiana Tobacco Commission (ATC) under permit number TC 14058001 doing business at 1101 Clark Rd., Gary, IN 46404. After several investigations in December 2021, January 2022 and March 2022, a Notice of Violation was filed and served by the Indiana State Excise Police. As a result of those actions, the ATC Prosecutor sent a notice of those violations through a Notice of Violation and Settlement Offer letter mailed to the Permittee on April 21, 2022 establishing a settlement conference for May 23, 2022. The Permittee failed to appear for the conference and on August 5, 2022 the Prosecutor sent an Order to Show Cause setting the matter for hearing on September 1, 2022 at 11 A.M.

I. FINDINGS OF FACT

1. The ATC Prosecutor sent Notice of Violations to the Permittee at its address of record on April 21, 2022 stating that a prehearing conference will be held on May 23, 2022 at 10 AM.
2. The violations are listed in Exhibit 1 (admitted into evidence as Exhibit 1), consisting of the Indiana State Excise Police report under EX-22-00202 prepared by Joseph Formato March 16, 2022.
3. Permittee failed to appear at the prehearing conference on May 23, 2022.

4. **Prosecutor Andrew Wignall prepared and the Hearing Judge ordered that the Order to Show Cause notification be sent to the address of Fuel Express Inc., the Permittee, setting the matter for a hearing on September 1, 2022 at the ATC offices at 302 W. Washington St., Indianapolis, IN.**
5. **On September 1, 2022, at 11 AM at the ATC offices at 302 W. Washington St., Room E114, Indianapolis, Indiana the Permittee failed to appear for the Order to Show Cause hearing.**
6. **The Order to Show Cause notification sent to Fuel Express Inc. specifically notified the Permittee that if it failed to appear for the Order to Show Cause hearing, a default judgment shall be issued against the permit regarding the violation and sanctions imposed which could include revocation of the permit or certificate.**
7. **The Indiana State Excise Police incident report form under EX-22-002023 prepared by Ofc. Joseph Formato, which was offered and received as Exhibit 1 , showed that on 4 different occasions (December 8, 2021, December 15, 2021, January 11th, 2022, and March 1, 2022) The Indiana State Excise Police exercised a controlled buy with a reliable confidential informant and purchased substantially the same items each time- a pipe, individual cigarettes, cigarette lighter, and "chore boy".**
8. **These items in paragraph 7 are commonly called on the street a "starter kit" used for the ingesting of an illegal substance, often cocaine or heroin.**
9. **The sale of cigarettes in the State of Indiana cannot be accomplished by less than the full, unopened package of cigarettes.**
10. **Based upon investigation of the Indiana State Excise Police on four separate occasions in December, 2021, January, 2022 and March, 2022, violations of the Indiana tobacco laws were found, the location of fuel express inc. at 1101 Clark Rd., Gary, IN 46404 is found to be a public nuisance.**

11. Based upon the investigation of the Indiana State Excise Police on 4 separate occasions in December, 2021, January, 2022 and March 22, 2022, violations of I.C. 7.1-6-2-3 were found in that cigarettes were sold not in an un-opened package originating with the manufacturer.
12. Based upon investigation of the Indiana State Excise Police on 4 separate occasions in December 2021, January, 2022 and March 22, 2022, a violation of I.C. 7.1-3-18.5-2 were found in that Fuel Express Inc. did not display the holder certificate where the tobacco products were sold.
13. Any Finding of Fact may be considered a conclusion of law if the context so warrants.

II CONCLUSION OF LAW

1. The Commission has jurisdiction over this matter pursuant to I.C. 7.1 -1-2-2 and I.C. 5.1-2-3-4.
2. The Notice of the Violations was proper. 905 IAC 1-37-1 and 905 IAC 1-37-2.
3. A Prehearing Conference was held under 905 IAC 1-37-6 and the Permittee had an opportunity to participate in the Prehearing Conference but failed to appear.
4. The Hearing Judge issued an Order to Show Cause to Permittee which ordered Permittee to appear. 905 IAC 1-37-9.
5. The Permittee received notification of the Order to Show Cause and to appear at the ATC for a hearing and failed to do so.
6. The violations filed in this matter violate the laws of the State of Indiana and the Indiana Administrative Code and indicate an unwillingness to follow those laws and rules which were a condition for the issuance of the tobacco permit to the Permittee.
7. A default judgment is appropriate to complete the disposition of the violations. 905 IAC 1-37-9
8. Revocation of the Permittee's tobacco license is an appropriate measure for the violations and the failures to appear in this matter.

9. Seizure of the tobacco products, tobacco paraphernalia and U.S. currency located on the premises of Fuel Express Inc., DBA Golo at 1101 Clark Rd., Gary, IN 46404 is an appropriate measure for the violations and the failures to appear in this matter.
10. The Permittee, Fuel Express Inc., DBA Golo, will have 15 days after the Issuance of these Findings of Fact and Conclusions of Law to request refund of the payment for the renewal of this tobacco license and failure to timely submit such request for refund will result in a forfeiture of the renewal payment.
11. Any Conclusion of Law May Be Considered a Finding of Fact if the context so warrants.

III DEFAULT JUDGMENT ORDER

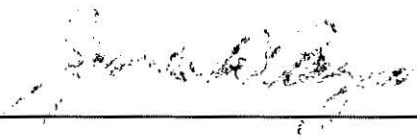
The Permittee, Fuel Express Inc., DBA Golo, after receiving the Order to Show Cause sent on August 5, 2022, failed to appear for the prehearing conference and the Order to Show Cause for hearings in this matter.

THEREFORE, IT IS ORDERED AND ADJUDGED AND DECREED that the Permittee, Fuel Express Inc., DBA Golo is found in default for a violation of I.C. 7.1-3-27-11 I.C. 7.1 -3-27-8, and the permit of Fuel Express Inc., permit no TC 14058001 is hereby revoked.

IT IS FURTHER ORDERED the Indiana State Excise police are hereby authorized to seize the tobacco products, tobacco paraphernalia, and US currency located on the premises of Fuel Express Inc., DBA Golo located at 1101 Clark Rd., Gary, IN.

IT IS FURTHER ORDERED that Fuel Express Inc., DBA Golo will have 15 days from the date of this final order to request refund for payment for the renewal of this license and failure to do so will result in a forfeiture of those funds to ATC.

All of which is ordered this 9th day September, 2022.



James W Payne, Hearing Judge

Distribution:

Andrew Wignall, Prosecutor, ATC

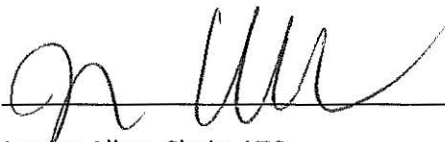
Fuel express Inc.

1101 Clark Rd.

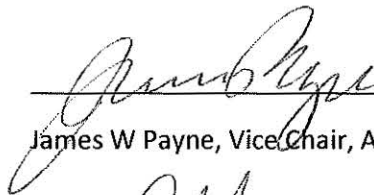
Gary, Indiana 46404

The Indiana Alcohol and Tobacco Commission pursuant to 905 IAC 1-37-13 hereby accepts the proposed final order of the Hearing Judge and designates this as its final order.

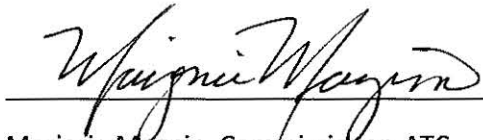
DATED this 15th day of November 2022




Jessica Allen, Chair, ATC



James W Payne, Vice Chair, ATC



Marjorie Magnin, Commissioner, ATC



Dale Grubb, Commissioner, ATC