

A Hearing Under Section 6 of the *Tobacco Control Act* R.S.B.C. 1996, c. 451  
as amended

Regarding an alleged Contravention of Sections 2(2) and 2.4(a) of the  
*Tobacco Control Act* R.S.B.C. 1996, c.451

- by -

Speedie Star Service Ltd.,

(the “Respondent”)

Administrator’s Delegate under Section 5 of the <i>Tobacco Control Act</i> :	C. L. Roberts
Date of Hearing:	April 16, 2014
Place of Hearing:	by teleconference
Date of Decision:	April 18, 2014
Appearing:	
Speedie Star:	Jagraj Narang, Owner
For the Fraser Health Authority:	Hans Mulder, Tobacco Enforcement Officer

## **Decision**

### **Background**

1. On February 21, 2014, the Administrator issued a Notice of Administrative Hearing to determine whether or not Speedie Star Service Ltd. (“Speedie Star”) had contravened Sections 2(2) and 2.4 (a) of the *Tobacco Control Act* (the “Act”) by selling tobacco products to a minor and displaying tobacco products in a manner by which they could reasonably be seen by a minor.
2. The hearing was set for April 16, 2014. On April 3, 2014, Fraser Health Authority notified me that the parties had reached an agreement on the question of liability and penalty and I

determined that the hearing to confirm the terms of the agreement could proceed by teleconference.

3. Speedie Star was represented by counsel until April 2, 2014. Through its counsel, Speedie Star conceded that it had contravened Section 2(2) of the *Act* by selling tobacco products to a minor, and agreed to a 75 day suspension and a \$3,000 penalty. In light of Speedie Star's admission that it had contravened Section 2(2), the Fraser Health Authority agreed not to proceed with the 2.4(a) allegations.
4. At the hearing on April 16, 2014, Mr. Narang acknowledged that Speedie Star had contravened Section 2(2) of the *Act* and confirmed the terms of Speedie Star's agreement with the Health Authority. However, he sought to have the period of suspension to commence some time in September. I understand that Mr. Narang wishes to sell the store and does not want the suspension to affect the possible sale.
5. The Health Authority sought to have the suspension period run from May 16, 2014 through to July 29, 2014.

## **Law**

6. Section 6.1 of the *Act* provides that, if the administrator is satisfied that a person has contravened the *Act*, the administrator may a) make an order imposing a monetary penalty on the person, in accordance with the prescribed schedule of penalties and b) prohibit the person, in accordance with the prescribed schedule of prohibition periods, from selling tobacco or offering to sell tobacco.
7. Section 13 of the *Tobacco Control Regulation* sets out a number of factors the administrator must consider in imposing an administrative penalty.

## **PENALTY**

8. The parties have agreed that the following penalty is appropriate:
  - a) A monetary penalty in the amount of \$3,000; and
  - b) A 75 day license suspension.
9. For the reasons below, I am satisfied that the jointly agreed upon penalty is both in compliance with the *Act* and *Regulations*, and is appropriate in the circumstances.
10. Remaining at issue is the period of the agreed upon license suspension. Speedie Star wishes to have the period commence some time after September 1, 2014 while the Health Authority seeks to have the period commence May 16, 2014.
11. I have considered the fact that Speedie Star initially faced two contravention allegations: 1. the sale occurring January 18, 2014; and 2. the display occurring January 28, 2014.
12. I have also considered Speedie Star's contravention history, which includes warning notices for contraventions of Section 2(2) issued July 17, 2010, August 2, 2010, and August 9, 2011. I have also considered the fact that Speedie Star was found by an Administrator's

delegate to have contravened Section 2(2) on February 26, 2013. (*FHA-2-2013*) At that time, the Administrator’s delegate determined that Speedie Star was paying a heavy financial price for the contravention by being prohibited from selling tobacco for 25 full days and that the prohibition may have the effect of changing their behaviour. The Administrator’s delegate found it appropriate to balance the important policy reasons set out in the *Act* with the financial hardship it would cause Mr. and Mrs. Narang. The delegate concluded “...[Speedie Star] must be aware that any future sales of tobacco to minor may result in harsher financial penalties” and ordered Speedie Star to pay a penalty of \$1,000.

13. Despite the warnings, a previous finding of a contravention and the Health Authority’s efforts to assist Speedie Star in staff training and implementing cash register software, Speedie Star has again failed to comply with the *Act*.
14. While I accept that there may be some risk that a license suspension may affect Speedie Star’s ability to sell the premises, I am not persuaded that this risk is significant. The suspension period is both limited and a consequence of the actions of the current owner. Potential purchasers will, no doubt, consider these factors when conducting their due diligence.

## **ORDER**

15. Pursuant to Section 6.1(2) of the *Act*, I **ORDER** that Speedie Star pay a monetary penalty in the amount of **\$3,000**, which is due and payable upon service of this Decision and Order. I **FURTHER ORDER** that Speedie Star be prohibited from selling tobacco or offering to sell tobacco at 26391 Fraser Highway, Aldergrove, B.C. for the period May 16, 2014 until July 29, 2014, inclusive.



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Carol Roberts, Administrator’s Delegate