

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

Regarding an alleged Contravention of Section 2(2) of the
Tobacco Control Act R.S.B.C. 1996, c.451

- by -

Speedie Star Service Limited,

(the “Respondent”)

Administrator’s Delegate under
Section 5 of the *Tobacco Control Act*:

Helen Pinsky

Date of Hearing:

January 29, 2013

Place of Hearing:

Langley, British Columbia

Date of Decision:

February 26, 2013

Appearing:

Speedie Star Service Limited

Seema Rani Narang

Jagraj Narang

Samantha Narang

For Fraser Health Authority:

Hans Mulder

Tobacco Enforcement Officer

Decision and Order

BACKGROUND

1. Speedie Star Service Limited is a company incorporated in British Columbia, and operating a convenience store and gas station known as “Speedie Star Service” (the “Store”) in Aldergrove, British Columbia.

2. Seema Rani Narang is the president of Speedie Star Service Limited (the Respondent). She and her husband Jagraj Narang operate the Store, together with their children and some staff. Their daughter, Samantha Narang spoke on behalf of the family and the respondent at the hearing.
3. Hans Mulder, a Tobacco Enforcement Officer (TEO), appeared on behalf of the Fraser Health Authority (FHA). He was accompanied by a youth who acted as a Minor Test Shopper (MTS) on September 28, 2012. He was also accompanied by Edward Wong, a Tobacco Enforcement Officer with the FHA. Neither the youth nor Mr. Wong gave evidence or made submissions, but acted in an observer status only.
4. On November 8, 2012, a Notice of Administrative Hearing was issued under the *Tobacco Control Act*, R.S.B.C. 1996, c. 451 (The “*Act*”), to Speedie Star Service Limited for a hearing to determine whether the respondent had committed a contravention of the *Act*, and allowing for an Order to be made.
5. Service of the Notice was confirmed at the hearing
6. Immediately before the hearing was about to commence, the parties asked for an opportunity to confer privately among themselves which they did for some fifteen minutes. On their return to the hearing room, the parties advised me that they had reached some consent agreements. Those agreements will be described in this decision, and orders are made in accordance with their agreements.

LEGISLATIVE FRAMEWORK

7. The *Act* sets out the manner in which a person may deal in, sell, offer for sale, distribute, provide, advertise or promote the use of tobacco in British Columbia. It establishes prohibitions and penalties for non-compliance. Specifically:

Section 2(2) of the *Act* prohibits the sale, offer to sell, provision or distribution of tobacco to an individual who has not reached the age specified by regulation.

Section 6.1(1) of the *Act* permits the administrator to make an order under Section 6.1(2) if satisfied that a person has contravened a provision of the *Act* or Regulation, or of an order of the administrator. Section 6.1(2) specifies that the order may impose a monetary penalty on the person, or it may prohibit that person from selling tobacco or offering to sell tobacco at retail from the location at which the contravention occurred, or under certain circumstances, from any other location.

8. The Tobacco Control Regulation (the “*Regulation*”) defines the age for the purposes of Section 2 (2) of the *Act* to be 19 years.
9. Section 12 of the Regulation establishes that “A person must not be found to have contravened a provision of the *Act* or Regulation prescribed under section 6 if the person demonstrates to the satisfaction of the administrator that the person exercised due diligence to prevent the contravention.”

10. Section 13 of the Regulation sets out the factors which the administrator must take into account in imposing an administrative penalty on a person for contravening a prescribed provision of the *Act* or Regulation.

EVIDENCE

11. The parties agreed as follows:
12. On September 28, 2012, the Respondent sold tobacco to an MTS who was under the employ and surveillance of Mr. Mulder at the time. The sale was made by an employee of the Store to the MTS. Mr. Mulder advised Mr. Narang of the occurrence soon thereafter.
13. Although there have been some attempts to train staff regarding the restrictions on tobacco sales to minors, the Store has not yet been successful in its training program. There have been anonymous complaints from parents in the neighbourhood about their children purchasing tobacco products at the Store.
16. The FHA has issued the Respondent two tickets for other violations of section 2 (2) of the *Act*. One infraction, dated April 8, 2011, has been heard in Court and a monetary penalty of \$575.00 was imposed by the court. Another infraction is being heard in February, 2013. The Company has acknowledged that the infractions did occur. This incident is the third time that the Store has sold tobacco to a MTS employed by the FHA.
17. The FHA is working with the Respondent to train new staff, to use cash register software which requires the operator to verify the purchaser's date of birth, and the Authority has provided a tobacco retailer tool kit for the Respondents to enhance basic training for employees.
18. The Respondent is willing to learn compliance methods in order to prevent the ongoing history of committing infractions.

ANALYSIS AND FINDINGS

19. The first issue to determine is whether the FHA has proven on a balance of probabilities that the respondent sold a tobacco product to a person under the age of 19 years, in contravention of the provisions of section 2(2) of the *Act*. Based on the joint statement of agreed facts, I find that in fact the Respondent did commit this offence on September 28, 2012.
20. The second issue is to determine whether the Respondent has demonstrated to the satisfaction of the administrator the defence pursuant to section 12 of the Regulation, that they exercised due diligence to prevent the contravention. No evidence was submitted to demonstrate the exercise of due diligence, and I found that the defence is not applicable in this case.

21. I must now determine the appropriate penalty under the *Act* and Regulation for the contravention of Section 2(2). The penalty provisions for this offence include both fines and prohibitions from selling tobacco for particular periods of time.
22. The parties have submitted an agreed-upon prohibition period for the sale of tobacco in the Store. They jointly agreed to a 25 day prohibition period, and further agreed that the prohibition might begin in February, 2013. I make no comment except to include their agreement in my decision and order.
23. As to the fines, Mr. Mulder requested a fine of \$2500. This was the Store's third sale to a MTS employed by the FHA, and he is seeking a penalty amount of some consequence. He argued that the first fine that was imposed by violation ticket, in the amount of \$575, did not seem to have the desired effect of creating compliance. He also wishes this decision to demonstrate to other retailers that the *Act* holds serious consequences for frequent violators.
24. I understand Mr. Mulder's desire for a fine which clearly conveys that this is a serious breach. However, in other decisions the Administrator has found that a violation of the *Act* can only be considered a "contravention" once it has been made the subject of an administrative hearing. In order to remain consistent, I consider this matter a first contravention, as this is the first time the administrator has taken action with respect to the Respondent's breach of Section 2 (2) of the *Act*. I note also that for a first contravention, the consequences include both a monetary penalty and a prohibition period, which together are far in excess of the consequences of a violation ticket.
25. If I determine that a lesser amount of fine is appropriate, Mr. Mulder asks that the penalty be at least twice the amount of a violation ticket.
26. The Respondent submits that its business at the Store runs on tobacco sales. If someone comes in to buy cigarettes, they also buy other items. The Respondent will be losing many sales during the ban, and asks that the amount of fine be reduced to reflect their lost revenue.

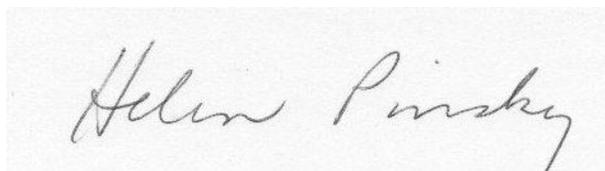
PENALTY

27. In reaching my decision on penalty I have taken the following factors into account.
 - a. The need for a deterrent
 - b. This is the third infraction for the Respondent.
 - c. There have been multiple parental complaints in the community.
 - d. The Narang family are all willing and prepared to take further steps to create compliance within their store.
 - e. It is important to balance the livelihood of the family with the effect of a general deterrence on the community of retailers
 - f. A first contravention of Section 2 (2) of the *Act* has a maximum monetary penalty of \$1,000 and a maximum prohibition of 30 days.

- g. A second contravention has a maximum monetary penalty of \$3,000 and a maximum prohibition period of 90 days.
28. Based on the above factors, I find that the Respondents are paying a heavy financial price for their contraventions by being prohibited from selling tobacco for 25 full days. That penalty also serves as a strong public deterrence to other retailers who will become aware of the financial consequences of contravening the *Act*. The prohibition on sales may have the desired effect of changing the behaviour of the Respondent in terms of training and use of the aids that are being provided to them by the FHA. However I must balance this financial hardship on the Respondent with some concern with their ability to feed their family. I agree with Mr. Mulder that the penalty must be higher than the first one imposed, and this is taken into consideration. However, the Respondent must be aware that any future sales of tobacco to minors may result in harsher financial penalties.

ORDER

1. **As I have found that** Speedie Star Service Limited contravened Sections 2(3) and 2.4 of the *Act*, **I ORDER**, pursuant to Section 6.2(2) of the *Act*, that it pay a penalty of **\$1,000**, which sum is due and payable upon service of this Decision and Order.
2. **In addition, as I have found that** Speedie Star Service Limited contravened Sections 2(2) and 2.4 of the *Act*, **I FURTHER ORDER** that it be prohibited from selling tobacco products for a period of 25 days beginning the date of the service of this Order, and in any event, no later than March 15, 2013. Any days in which Speedie Mart Service Limited have refused to sell tobacco products in accordance with the prohibition since January 29, 2013, will be counted fully towards the 25 day period of prohibition.



Helen Pinsky, Administrator's Delegate

