

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-28

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF REVENUE
DIVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908**

IN THE MATTER OF:

**SC 14-019
Case No.: 14-T-0044
cigarette dealer's license**

Taxpayer.

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of an Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer ("Order to Show Cause") dated June 4, 2014 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division"). A hearing was held on October 8, 2014. The Taxpayer did not appear. As the Taxpayer had been adequately notified of the hearing,¹ the hearing went forward. The Division was represented by counsel and rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-20-1 *et seq.*, *Division of Taxation Administrative Hearing Procedures*

¹ The Order of Show Cause was sent by first class and certified mail to the Taxpayer to the Taxpayer's address on record with the Division. In response to the Order to Show Cause, the Taxpayer contacted the undersigned and Division by email but never forwarded an executed power of attorney to the Division. A pre-hearing conference was scheduled for July 17, 2014 at which the Taxpayer did not appear. The pre-hearing conference was continued to September 4, 2014 in case the Taxpayer planned to file a power of attorney. Neither the Taxpayer nor a representative appeared at the pre-hearing conference on September 4, 2014. Therefore, a full hearing was scheduled for October 8, 2014 at which neither the Taxpayer nor a representative appeared. The Taxpayer was notified of the September 4, 2014 pre-hearing conference and the October 8, 2014 by first class mail to its address on record with the Division. Neither notice was returned to the undersigned.

Regulation AHP 97-0, and the Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings.

III. ISSUE

Whether the Taxpayer's cigarette dealer's license should be suspended and an administrative penalty imposed on the Taxpayer pursuant to R.I. Gen. Laws § 44-20-1 *et seq.*

IV. MATERIAL FACTS AND TESTIMONY

Supervisor, Special Investigations, testified on behalf of the Division. He testified that the Taxpayer applied and received a permit to make sales at retail as well as for a cigarette dealer's license. See Division's Exhibits B and C (October 8, 2010 business application and registration and December 12, 2011 application for cigarette dealer's license respectively). He testified that the Taxpayer was acting as a smoking bar but had not filed the smoking bar affidavits for 2011 and 2013. He testified that the Taxpayer's permit to make sales is now blocked and its cigarette dealer license has expired. See Division's Exhibits D and E (sales permit blocked and expired cigarette dealer license respectively).

Tax Investigator, Special Investigations, testified on behalf of the Division. He testified that he and his partner, (), Tax Investigator, went to the Taxpayer's location to perform a tobacco compliance check on March 20, 2014 at about 5:30 to 6:00 p.m. when the Taxpayer was open for business. He testified the owner was not there so they explained to the manager why they were there. He testified that the manager spoke to the owner by telephone and they were asked to leave. He testified there were no invoices available for them to review and he explained to the manager that they were allowed to inspect pursuant to R.I. Gen. Laws 44-20-40.1. He testified that the owner called again to make sure they left and so that they did not finish their compliance check. He testified that a penalty

was imposed on the Taxpayer for failure to allow inspection. See Division's Exhibit F (compliance report).

testified on behalf of the Division. He testified that on the day of the inspection, he spoke to the Taxpayer's owner to explain why they were there and informed the owner they needed to inspect the invoices and the owner said the invoices were at the corporate office. He testified that he told the owner the invoices should be on the premises. He testified they were not able to complete their inspection of other tobacco products.

Revenue Agent, Special Investigations, testified on behalf of the Division. She testified that she created the Notice of Deficiency and Notice of Cigarette License Suspension that were issued to the Taxpayer for failing to allow inspection. See Division's Exhibits G and H (Notice of Deficiency dated April 3, 2014 and Notice of Cigarette License Suspension dated April 3, 2014 respectively). She testified that the Notice of Deficiency was issued for an administrative penalty of pursuant to R.I. Gen. Laws § 44-20-51 and a notice of 30 day license suspension was issued pursuant to R.I. Gen. Laws § 44-20-8. She testified that the Notice of Deficiency and Notice of License Suspension were hand-delivered and sent by certified mail to the Taxpayer. She testified that the Taxpayer submitted the smoking bar affidavits for 2010 and 2012 but not for 2011 and 2013. She testified that the Taxpayer was notified twice by the Division regarding the missing smoking bar affidavits. See Division's Exhibit K (January 21, 2014 letter and May 19, 2014 facsimile from Division to Taxpayer). She testified that since she had not received the smoking bar affidavits, she forwarded that information to Collections (Division's Exhibit M).

Senior Revenue Officer, Collections, testified on behalf of the Division. She testified that when she received the information that the Taxpayer had not complied with the

smoking bar affidavits, the Taxpayer's sales permit and cigarette dealer's license were blocked for non-compliance. She testified that the cigarette dealer's license has now expired but the sales permit was blocked on May 6, 2014. She testified that the Taxpayer was sent notice of the blocking on May 15, 2014 and was sent notice of the cigarette permit renewal on December 10, 2013. See Division's Exhibit N (Taxpayer's mainframe records). She testified that the Taxpayer has not paid the 2013 minimum corporate tax that was due March 15, 2014 and is missing its 2011 reconciliation which was due before January 31, 2012. See Division's Exhibits O and P (Taxpayer's mainframe records). In addition, she testified that for the Taxpayer to come into compliance, the Taxpayer needs to notify the Division in writing of its change in "d/b/a" which it has already changed at the secretary of state's office. See Division's Exhibit A (Taxpayer's secretary of state records indicated a change in d/b/a on June 2, 2014).

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the

legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. Relevant Statutes

R.I. Gen. Laws § 44-20-40.1 provides in part as follows:

Inspections. – (a) The administrator or his or her duly authorized agent shall have authority to enter and inspect, without a warrant during normal business hours, and with a warrant during nonbusiness hours, the facilities and records of any manufacturer, importer, distributor or dealer.

R.I. Gen. Laws § 44-20-8 provides as follows:

Suspension or revocation of license. – The tax administrator may suspend or revoke any license under this chapter for failure of the licensee to comply with any provision of this chapter or with any provision of any other law or ordinance relative to the sale of cigarettes; and the tax administrator may also suspend or revoke any license for failure of the licensee to comply with any provision of chapter 13 of title 6, and, for the purpose of determining whether the licensee is complying with any provision of chapter 13 of title 6, the tax administrator and his or her authorized agents are empowered, in addition to authority conferred by § 44-20-40, to examine the books, papers, and records of any licensee. The administrator shall revoke the license of any person who would be ineligible to obtain a new or renew a license by reason of any of the conditions for licensure provided in § 44-20-4.1. Any person aggrieved by the suspension or revocation may apply to the administrator for a hearing as provided in § 44-20-47, and may further appeal to the district court as provided in § 44-20-48.

R.I. Gen. Laws § 44-20-51.1 provides in part as follows:

Civil penalties. – (a) Whoever omits, neglects, or refuses to comply with any duty imposed upon him/her by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall, in addition to any other penalty provided in this chapter, be liable to a penalty of one thousand dollars (\$1,000), or five (5) times the retail value of the cigarettes involved, whichever is greater, to be recovered, with costs of suit, in a civil action.

C. Whether the Penalties Should be Imposed

The Division rested on the record. The hearing was requested by the Taxpayer on the Notice of Deficiency and the Notice of License suspension. See Division's Exhibit I (request for hearing).² It was undisputed that the Taxpayer refused to allow the Division's inspectors to conduct their inspection of the Taxpayer's premises. As a consequence, the Taxpayer violated R.I. Gen. Laws § 44-20-40.1 by failing to allow the inspection. Therefore, the Taxpayer violated a provision of R.I. Gen. Laws § 44-20-1 *et seq.* Pursuant to R.I. Gen. Laws § 44-20-8, a suspension of a cigarette dealer's license may be imposed for said statutory violation. Pursuant to R.I. Gen. Laws § 44-20-51.1, an administrative penalty of \$1,000 may be imposed for said statutory violation.

VI. FINDINGS OF FACT

1. On or about June 4, 2014, the Division issued an Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer to the Taxpayer.
2. The Taxpayer was adequately notified of the hearing but did not appear at the hearing. A hearing was held on October 8, 2014 with the Division resting on the record.
3. On March 20, 2014, two (2) Division inspectors attempted to conduct a tobacco compliance check of the Taxpayer pursuant to R.I. Gen. Laws § 44-20-40.1 but were unable to complete said inspection due to the Taxpayer denying access and not maintaining its records on the premises.

² However, the Division indicated that even if the Taxpayer complies with the cigarette dealer's license suspension and administrative penalty, the Taxpayer will not be able to legally open because of the Division's tax block. See R.I. Gen. Laws § 5-76-1 *et seq.* The Division represented that in order to have the tax block lifted, the Taxpayer will need to pay the minimum corporate tax for 2013, file an annual reconciliation for 2011, file the missing smoking bar affidavits for 2011 and 2013, and update its "d/b/a."

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

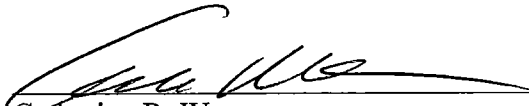
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.* and R.I. Gen. Laws § 44-20-1 *et seq.*
2. The Taxpayer violated R.I. Gen. Laws § 44-20-40.1.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

Pursuant to R.I. Gen. Laws § 44-20-8 and R.I. Gen. Laws § 44-20-51.1, the Taxpayer's cigarette dealer's license shall be suspended for 30 days³ and an administrative penalty of be imposed.

Date: November 5, 2014

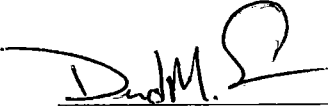

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: November 12, 2014


David Sullivan
Tax Administrator

³ The Taxpayer's cigarette dealer's license is currently expired so the Division may, if it chooses, consider that the time after the expiration to be a suspension if the Taxpayer seeks to obtain a new cigarette dealer's license.

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO R.I. Gen. Laws § 44-20-48 WHICH STATES AS FOLLOWS:

§ 44-20-48 Appeal to district court. – Any person aggrieved by any decision of the tax administrator under the provisions of this chapter may appeal the decision within thirty (30) days thereafter to the sixth (6th) division of the district court. The appellant shall at the time of taking an appeal file with the court a bond of recognizance to the state, with surety to prosecute the appeal to effect and to comply with the orders and decrees of the court in the premises. These appeals are preferred cases, to be heard, unless cause appears to the contrary, in priority to other cases. The court may grant relief as may be equitable. If the court determines that the appeal was taken without probable cause, the court may tax double or triple costs, as the case demands; and, upon all those appeals, which may be denied, costs may be taxed against the appellant at the discretion of the court. In no case shall costs be taxed against the state, its officers, or agents. A party aggrieved by a final order of the court may seek review of the order in the supreme court by writ of certiorari in accordance with the procedures contained in § 42-35-16.

CERTIFICATION

I hereby certify that on the 12th day of November, 2014 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to the Taxpayer's address on file with the Division of Taxation and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

