



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Andre Autz, Esq. - Nacmias Law 592 Pacific Street Brooklyn, NY 11217	Summons No: 24Q01519 DEPARTMENT OF CONSUMER AND WORKER PROTECTION, -against- HYBRED LLC Hearing Date: 12/16/2024 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$9,600.00	Restitution: \$0.00
Suspension/Revocation/Sealing:	

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
24Q01519	Sustained	07/06/2024	757 SENECA AVE Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	OCCUR- RENCE	NO. OF COUNTS	RESULT	PENALTY	SUSPENSION/ REVOCATION/SEALING
1	NA	NYC Admin Code § 20-561(a)(1)	1	1	Sustained	\$100.00	
2	NA	NYC Admin Code § 17-706(c)	1	1	Sustained	\$500.00	
3	NA	NYC Admin Code § 17-715(b)	1	9	Sustained	\$9,000.00	

Findings of Fact & Conclusions of Law

Andre Autz appeared as the authorized representative of the named respondent, and Inspector Munoz. appeared for the Petitioner.

The summons cites a violation of NYC Admin Code § 20-561(a)(1), NYC Admin Code § 17-706(c) and NYC Admin Code § 17-715(b) * [9]

The Petitioner submitted an evidence packet which included the summons and photos.

The inspector testified that he conducted the inspection along with the Sheriff's office and found that there was an unlicensed sale of e cigarettes. He went through the photos and described how they described flavored and vapor products at various locations in the premises. There was also a lot of Cannabis recovered. He noted that the photo of the awning show a sign for a liquor and wine store, which misrepresented the nature of the business.

As to the violation of 20-561, the respondent contended that that the evidence shows that there was THC but that this is different from an e cigarette. In the alternative, he also contended that the sheriff closed the store on 7/6/24 and it never reopened, so the per day penalties should be limited to that day. . He submitted the closure order dated 7/6/24 and a lease surrender dated 7/19/24.

The Petitioner contended that the issue with e cigarettes is not tobacco but liquid nicotine. Anything used to vape is considered an e cigarette. E cigarettes may have cannabis, but the main issue is in the described flavor. He described how this is demonstrated in the photos.

As to the date by which unlawful sales should be deemed to cease, he recommended 7/19/24, the date of the lease surrender.

As to this charge, I find the sworn account of the issuing officer to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense. I find there was unlicensed sales of e cigarettes on the day of issuance.

Insofar as the presumption of continued unlicensed activity, however, it appears that the closure order was in effect from the time of the inspection and still appears that it was not rescinded. Clearly it was still in effect as of the date that the order continuing the closure issued, which was July 25, 2024, after the lease had already been surrendered. As such, the sheriff's order of closure, for all intents and purposes. Made it impossible to continue the unlicensed activity. Accordingly, I find unlicensed activity limited to the one day of 7/6/24.

As to the charge of NYC Admin Code § 17-706(c), the respondent submitted a photo of a sign on the door which states that "Notice, you must be 21 years of age or older to enter, photo id required.

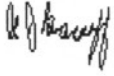
The inspector contended that this sign did not meet the requirements of "a sign in bold red letters that are at least one-half inch in height stating, "PROHIBITED for SALE to PERSONS UNDER 21: Cigarettes, cigars, smokeless tobacco, other tobacco products, electronic cigarettes and component parts, liquid nicotine, non-tobacco shisha, herbal cigarettes, pipes, rolling papers, or smoking paraphernalia."

As to this charge, I find the sworn account of the issuing officer to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense. The same issue presented in Appeal No. 22X00763 DCWP v. 1584 Deli Food Corp. February 17, 2023. In that matter, it was held that Code § 17-706(c) requires that a person operating a business selling or offering for sale cigarettes, tobacco products, liquid nicotine, electronic cigarettes, or non-tobacco smoking products must post in a conspicuous place a sign, in accordance with the rules of the department, advising persons about the minimum age requirements for the purchase of such items. Section 13-04(a) of 24 RCNY, in pertinent part, requires that the age restriction sign must state: "PROHIBITED for SALE to persons UNDER 21: Cigarettes, cigars, smokeless tobacco, other tobacco products, electronic cigarettes and component parts, liquid nicotine, non-tobacco shisha, herbal cigarettes, pipes, rolling papers, or smoking paraphernalia." Here, Respondent did not dispute that a sign with the required language was not posted on the cited date. Contrary to the hearing officer's finding, it is not a defense that Respondent had posted a sign "stating that the sale of tobacco or electronic cigarettes to person under the age of 21 is strictly prohibited." The Tribunal has consistently held that non-compliance with the exact language of required signage constitutes a violation. See DCA v. Won Soon Choe, 05443201 (posted sign stating "Do Not Use" was insufficient where 6 RCNY 2-134(a)(4)(ii) specified that sign on inoperable machine must read "Out of Order"); DCA v. Al-Muhajreen General Services, 05439324 (non-attorney disclosure sign failed to contain the exact language required by Code § 20-777.1(a)). As Respondent failed to refute the allegations or establish a valid defense, the Tribunal finds it in violation of Code § 17-706(c)."

Accordingly, this charge is sustained.

As to the charge of NYC Admin Code § 17-715(b) * [9] , in light of the inspector's earlier testimony, the respondent denied, but offered no evidence ot rebut, the charge.

As to this charge, I find the sworn account of the issuing officer to be credible, and that it establishes the charge . The respondent failed to set forth a valid legal defense. The charge is sustained.



December 17, 2024

12/17/2024

Amy Baranoff, Hearing Officer

Date