

BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY DEPARTMENT OF COMMERCE, COMMUNITY AND
ECONOMIC DEVEWOPMENT

In the Matter of:)
)
Edith Pungalik,) OAH No. 05-0607-TOB
DBA Pungalik's Store,) O/L No. 0501-05-116
)
Respondent.)
_____)

DECISION AND ORDER

I. Introduction

This case is a tobacco enforcement proceeding by the Department of Commerce, Community and Economic Development under AS 43.70.075. The department issued a Notice of Suspension of Tobacco Endorsement and Imposition of Civil Penalty to Edith Pungalik DBA Pungalik's Store, alleging that the business operated without a valid business license and sold tobacco without a valid tobacco endorsement. Ms. Pungalik requested a hearing. The department transferred the case to the Office of Administrative Hearings,¹ and a hearing was held in conformance with regulations at 12 AAC 12.800 – 12 AAC 12.990. This document is the proposed decision for the department in accordance with AS 43.70.075(m) and (n). Based on the evidence and in accordance with provisions of AS 43.70.075, it is recommended that Ms. Pungalik not be subject to discipline.

II. Facts

On December 30, 2003, Edith Pungalik filed a renewal Alaska Business License Application for the business Pungalik's Store, for which she is the sole proprietor. The application indicates that the business sells tobacco products as a retailer. Application fees are \$200.00 for a business license² and \$100.00 for a tobacco sales endorsement, for a total of \$300.00. The application was accompanied by a \$200.00 payment. According to the Request

¹ The Office of Administrative Hearings (OAH) was created in 2004. See AS 44.64.010.

² On September 4, 2003, the business license fee, excluding the tobacco endorsement fee, was increased from \$100.00 to \$200.00 for the biennial licensing period. Exhibit 2.

for a Hearing, Pungalik “quit selling Tobacco & Merchandise the first Part of 2004.” Pungalik did not testify and she called no witnesses. For its part, the division did not establish that tobacco sales took place in 2004 or 2005.³

On January 6, 2004, the department sent Pungalik’s Store a notice that the application fees were deficient by \$100.00. Ms. Pungalik did not respond. On June 1, 2005, a representative of the division of occupational licensing sent Pungalik’s Store a letter serving notice that the business license application “is now considered abandoned pursuant to 12 AAC 02.910.” Again, Ms. Pungalik did not respond.

On July 5, 2005, the department issued to Edith Pungalik DBA Pungalik’s Store a Notice of Suspension of Tobacco Endorsement and Imposition of Civil Penalty. The notice alleged that “[f]rom approximately January 1, 2004, to the approximately July 2005 [sic], Edith Pungalik has done business as Pungalik’s Store” without a valid business license in violation of AS 43.70.020 (Count I), and without a valid business license tobacco endorsement in violation of AS 43.70.075 (Count II).

Again Ms. Pungalik did not respond to the alleged violations; however, she requested a hearing and agreed to the hearing date. She subsequently did not attend or otherwise participate at the hearing. The division of occupational licensing presented its case. Investigator Don Faulkenburry testified as the only witness. Exhibits 1 through 4 were admitted as evidence. The division offered no evidence that Pungalik did business or sold tobacco products in during the licensing period.⁴

III. Discussion

A. Applicable Law

In this tobacco enforcement case, the Department of Commerce, Community and Economic Development is exercising state regulatory authority under the Alaska Business License Act (AS 43.70). The department grants business licenses in accordance with AS 43.70.020 and 12 AAC 12.020. Under AS 43.70.075(a), the agency issues endorsements to business licenses allowing the retail sale of “cigarettes, cigars, tobacco, or products containing tobacco.”

³ There is no provision for a default proceeding.

⁴ An amended Notice of Suspension of Tobacco Endorsement and Imposition of Civil Penalty was filed with the Office of Administrative Hearings after the hearing on April 20, 2006. There is no indication that the amended document was served on Ms. Pungalik.

AS 43.70.075(m) and 12 AAC 12.835 address the standard of proof in a tobacco enforcement proceeding. In this case, the department has the legal burden to prove by a preponderance of the evidence that Pungalik violated AS 43.70.075. Under AS 43.70.075(q), provisions of the Administrative Procedure Act in AS 44.62 do not apply.

B. Sanctions Are Not Warranted Under AS 43.70.075(k)(1) and (s).

The Notice of Suspension in this case contains two counts. Count one alleges that Pungalik conducted business without a valid business license in violation of AS 43.70.020 “from approximately January 1, 2004, to the approximately [sic] July 2005.” The division did not prove this count by a preponderance of the evidence.

Count two of the Notice of Suspension in this case alleges that Pungalik sold tobacco without a valid business license tobacco endorsement “from approximately January 1, 2004, to the approximately [sic] July 2005.” The division did not prove this count by a preponderance of the evidence.

Because no violation was proven, no sanction is imposed.

IV. Conclusion

The division did not prove the allegations in Counts One and Two in the Notice of Suspension by a preponderance of the evidence. Accordingly, no sanction is appropriate.

DATED this 27th day of May, 2006.

By: _____
David G. Stébing
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 44.33.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Commerce, Community and Economic Development and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Rule 602 of the Alaska Rules of Appellate Procedure within 30 days after the date of this decision.

DATED this 30th day of May, 2006.

By: _____

Signature

Richard K. Urish

Name

Director

Title